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Supreme Court of the United States
OCTOBER TERM, 1966

No. 399 34

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, PETITIONER,

US.

PHILADELPHIA MABINE TRADE ASSOCIATION.

ON WEIT OF CRETIONARI TO THE UNITED STATES COURT OF APPRAIS
FOR THE THIRD CIRCUIT

PRITITION FOR CERTIFORARI FILED DECEMBER 21, 1965 CERTIFORARI GRANTED FEBRUARY 12, 1967 , 0

SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1966

No. 892

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, PETITIONER,

W.S.

PHILADELPHIA MARINE TRADE ASSOCIATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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FOR THE THIRD CIRCUIT

No. 15,613

PHILADELPHIA MARINE TRADE ASSOCIATION,

v.

International Longshoremen's Association, Local 1291, Appellant.

Appeal from Order of the United States District Court for the Eastern District of Pennsylvania, Granting Injunctive Relief.

Appellant's Appendix—Filed October 11, 1965

Abraham E. Freedman, Martin J. Vigderman, Freedman, Borowsky and Lorry, 1415 Walnut Street, Philadelphia, Pennsylvania 19102, Attorneys for Appellant.

File endorsement omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RELEVANT DOCKET ENTRIES

August 2, 1965	Complaint filed
August 2, 1965	-Summons exit
August 2, 1965	Order fixing hearing on Aug. 3, 1965, at 11:00 A.M. to show cause why defendant has not complied with Arbitrator's Award, filed.
August 3, 1965	Hearing sur order to show cause—hearing continued
August 3, 1965	Hearing re motion to dismiss—argued—motion defied
August 5, 1965	Transcript of August 3, 1965, filed.
August 12, 1965	Summons returned: "on 8-2-65 served" and filed.
September 13, 1965	Hearing re arbitrator's award—continued to 9/14/65 at 2 P.M.
September 15, 1965	Further hearing re arbitrator's award Witness sworn (Order signed)
September 15, 1965	Order of Court that the defendant comply with the Arbitrator's Award issued on June 11, 1965, filed. 9-16-65 entered & notice mailed
September 16, 1965	Transcript of Sept. 13, 1965, filed.
September 16, 1965	Transcript of Sept. 15, 1965, filed.
September 16, 1965	Notice of appeal by defendant, filed. Copy to Kelly, Deasey & Scanlan, Esqs.
September 16, 1965	Copy of Clerk's notice to U.S. Court of Appeals, filed.

September 16, 1965 Defendant's motion to dismiss complaint, filed with the Court Aug. 3, 1965.

September 16, 1965 Memorandum in support of defendant's motion to dismiss, filed with the Court Rug. 12, 1965.

September 16, 1965 Defendant's statement of the case, filed with the Court Aug. 3, 1965.

[fol. 2]

September 16, 1965 Memorandum contra defendant's motion to dismiss, filed with the Court Aug. 20, 1965.

September 16, 1965 Brief in support of complaint for specific enforcement of an arbitrator's award, filed with the Court Aug. 3, 1965.

[fol. 3]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 38647

Philadelphia Marine Trade Association, a non-profit Delaware corporation, Bourse Building, Philadelphia, Pa., Plaintiff,

VS.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 1291, Pier 4, South Wharves, Philadelphia, Pa., Defendant.

COMPLAINT—Filed August 2, 1965

1. This action arises under the Labor Management Relations Act of 1947, 61 Stat. 136 Section 301; U.S.C. Title 29, Section 185.

[fol.4] 3. International Longshoremen's Association, Local 1291 (hereinafter referred to as the "Union") is a chartered local of the International Longshoremen's Association (AFL-CIO) having its local office and place of business at Pier 4, South Wharves, Philadelphia, Pennsylvania.

- 4. The P.M.T.A. and the Union are parties to a Collective Bargaining Agreement dated February 11, 1965, a copy of which is attached hereto, made a part hereof and marked Exhibit "A".
- 5. The aforesaid Collective Bargaining Agreement incorporates certain provisions of a previous Collective Bargaining Agreement between the P.M.T.A. and the Union which expired on September 30, 1964. A copy of the previous Collective Bargaining Agreement is attached hereto, made a part hereof and marked Exhibit "B".
- 6. On or about April 26, 1965, a dispute arose between the P.M.T.A. and the Union regarding the provisions of Section 10, subparagraph 6 of the Agreement dated February 11, 1965 and the matter was referred to an arbitrator, Milton M. Weiss, on April 30, 1965 in accordance with the provision of the Agreement dated February 11, 1965 and the previous Collective Bargaining Agreement, more specifically Section 28 of the latter agreement relating to the "Grievance Procedure".

- 7. The issue before the Arbitrator was whether Section 10, subparagraphs 5 and 6 are to be construed together so that the individual Employer's right to set back a gang of longshoremen from 8:00 A.M. to 1:00 P.M. is conditional [fol. 5] solely upon the non-arrival of a vessel in port, or whether such Employer's right to "set back" a gang of longshoremen from 8:00 A.M. to 1:00 P.M. is without qualification.
- 8. On June 11, 1965, the Arbitrator, Milton M. Weiss, in his opinion sustained the P.M.T.A.'s position and held that Section 10(6) providing gangs "ordered for an 8:00 A.M. start Monday through Friday can be set back at 7:30 A.M. on the day of work to commence at 1:00 P.M., at which time a four-hour guarantee shall apply. A one-hour guarantee shall apply for the morning period unless employed during the morning period", may be invoked by the Employer without qualification. A copy of the Arbitrator's Award is attached hereto, made a part hereof and marked Exhibit "C".
- 9. On July 30, 1965, a dispute arose between P.M.T.A. and the Union involving an Employer's (Nacirema Operating Company) right to "set back" in accordance with the provisions of Section 10(6) of the Collective Bargaining Agreement and the Award of the Arbitrator dated June 11, 1965. The Union through its President, Richard L. Askew and four of its Delegates, Messrs. Devine, Smith, Johnson and Talmadge advised the P.M.T.A., through its Executive Secretary, Alfred Corry, that the Union does not agree with the Arbitrator's Award and does not intend to comply with the terms of such award.
- [fol. 6] 10. As a consequence of the Union's refusal to abide by the terms of the Arbitrator's Award, the Employer (Nacirema Operating Company) was unable to work the steamship "Shaugran" resulting in serious loss and damage to said Employer, the owners and operators of the "Shaugran" and to the Port of Philadelphia.

11. The defendant's refusal to comply with the terms of the Arbitrator's Award constitutes a breach of the applicable provisions of the current Collective Bargaining Agreement between the P.M.T.A. and the Union.

Wherefore, plaintiff in view of the stated and confirmed intent of the Union to disregard the Arbitrator's Award dated June 11, 1965 relative to Section 10(6) of the current Collective Bargaining Agreement prays that the Court set an immediate hearing and enter an order enforcing the Arbitrator's Award, and that plaintiff may have such other and further relief as may be justified.

Respectfully Submitted

Kelly, Deasey & Scanlan, By William R. Deasey, Attorneys for Plaintiff.

[fol. 7] Duly sworn to by Alfred Corry, jurat omitted in printing.

[fol. 8]

EXHIBIT A TO COMPLAINT

MEMORANDUM OF SETTLEMENT BETWEEN PHIL-ADELPHIA MARINE TRADE ASSOCIATION AND INTERNATIONAL LONGSHOREMEN'S ASSOCIA-TION, LOCAL 1291

Applicable to the Longshoremen's Agreement which expired September 30, 1964

Effective for the period from October 1, 1964 to September 30, 1968

[fol. 12] 10. Hiring System

(1) For Tuesday through Saturday, day work, orders must be placed by 4 PM the day before.

- (2) For Sunday and Monday, day work, orders must be placed by Saturday at 9 AM.
 - (3) From Monday through Friday, night work (5, 6 and 7 PM) orders must be placed by 1 PM the same day. Guarantee shall apply until 11 PM.
 - (4) For Saturday and Sunday, night work, orders must be placed by 9 AM Saturday. Guarantee shall apply until 11 PM.
 - (5) For work commencing at 8 AM on Monday or at 8 AM on the day following a holiday, employers to have the right because of non-arrival of a vessel in port to cancel the gangs by 7:30 A.M.
 - (6) Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period unless employed during the morning period.
 - [fol. 13] (7) Any new overtime hire for Saturday, Sundays and Holidays, automatically entails four hours guarantee regardless of any conditions.
 - (8) Any new hire for a day following a holiday will be made by 4 PM the day before the holiday and will include the same cancellation and push back rights provided for Monday.
 - (9) Any man short at time work is scheduled to commence will be secured by replacement from the dispatching office.
 - (10) Ship side orders. The employer must notify the gangs and the dispatching office not later than 3 PM of the day they are working whether or not they are required back that night or the following day for the same vessel. Provisions of paragraph 6 to apply.

12. Flexibility.

- (a) Where an employer hired for two or more vessels for an 8 AM start and one of the vessels was delayed in arriving and was put back to a 1 PM start, the gangs hired on that vessel, which normally would be set back to await the arrival of the ship at 1 PM, may be used at the employer's discretion on his other ships during the morning period, subject to a four hour afternoon guarantee for the original ship.
- (b) Having completed a work period on one vessel gangs may, at the beginning of the succeeding work period, with the prior approval of the Joint Dispatching Committee, be transferred to another job to supplement the gang or gangs previously hired in accordance with the provisions of Section 10 hereof, with the understanding that the work remaining in the hatches on the original vessel will be completed by the gangs remaining thereon, subject, however, to the condition that opportunities on other ships shall be as great or greater than those on the original ship.
- (c) The employer will have first call on gangs registered with his company through the joint dispatching office. Where these gangs will work for another employer on a day on which their regular employer has no work, it is understood that these gangs may be recalled on a subsequent day to their regular employer. The work on the first vessel will, in this case, be completed by such gangs as may be available and secured through the joint dispatching office.
- (d) After a vessel has worked through one or more guaranteed periods and there remains work on the vessel, certain gangs may be released at the discretion of the operator with the approval of the Joint Dispatching Committee, and re-registered at the joint dispatching office to be available to accept new work assignments with as great [fol. 14] or greater work opportunity on the same or next day. The vessel shall be completed with the remaining

gangs and the gangs which have been replaced will have no claim to work on the vessel provided that the gang received a job assignment for another hire through the joint dispatching office.

[fol. 16] 16. Other Terms

Except as specifically enumerated above, all other terms and conditions contained in the expired contract between the parties hereto shall be incorporated and become a part of this agreement with the appropriate changes for dates, rates, etc. Where clauses contained in the expired contract conflict with the provisions of this agreement, the provisions of this agreement shall prevail.

[fol. 17] 18. Complete Settlement

By their execution of this agreement, the parties hereto agree that all issues between them have been completely settled in the matter and subject to the terms and conditions hereof, and this agreement is subject to no conditions other than ratification by their respective members.

FOR INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291:

/s/ Richard L. Askew

FOR PHILADELPHIA MARINE TRADE ASSOCIATION:

/s/ Alfred Corry

[fol. 18]

EXHIBIT B TO COMPLAINT

A-GREEMENTS

Negotiated by the

PHILADELPHIA MARINE TRADE ASSOCIATION
For Its Members

with the

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

(AFL-CIO)

for the

PORT OF PHILADELPHIA AND VICINITY

(Including all points on the Delaware River from Trenton, New Jersey to Artificial Island, Inclusive)

Effective October 1, 1939 to September 30, 1962

Issued by

PHILADELPHIA MARINE TRADE ASSOCIATION
Room 484, Bourse Building
Philadelphia 6, Pa.

[fol. 18a]

LONGSHOREMEN'S AGREEMENT

This Agreement made and entered into this 23rd day of December, 1959, by and between the members (hereinafter sometimes referred to as "the Employers" or "the Employer-members") of the Philadelphia Marine Trade Association (hereinafter sometimes referred to as "the Association") of the Port of Philadelphia and Vicinity, as parties of the first part, and Locals 1290, 1291, 1332 and 1694 of the International Longshoremen's Association,

(AFL-CIO) (hereinafter sometimes referred to as "the I.L.A." or "the Unions") as parties of the second part, covers the work pertaining to the rigging of ships, loading and unloading of all cargoes, including mail, ships' stores and baggage, in the Port of Philadelphia and Vicinity, including all points on the Delaware River from Trenton, New Jersey, to Artificial Island, inclusive.

The Employer-Members of the Association agree that they will not directly perform work done on a pier or terminal or contract out such work which historically and regularly has been and currently is performed by employees covered by this agreement or employees covered by I.L.A. craft agreements unless such work on such pier or terminal is performed by employees covered by I.L.A. agreements.

[fol. 18b] 9. Guarantees:

- (a) Men employed from Monday to Sunday, inclusive, shall be guaranteed four (4) hours' pay for the period between 8:00 A.M. and 12:00 Noon, regardless of any condition.
 - (b) Men re-employed at 1:00 P.M. from Monday to Sunday, inclusive, shall be guaranteed four (4) hours, with the exception of the finish of the hatch, or of a ship, which they shall receive a minimum of two (2) hours.
 - (c) Men hired for 1:00 P.M. from Monday to Friday, inclusive, who have not worked in the morning shall be guaranteed four (4) hours.
 - (d) Men hired for 1:00 P.M. on Saturday, Sunday or a Legal Holiday who have not worked in the morning shall be guaranteed four (4) hours.
 - (e) Men re-employed at 7:00 P.M. from Monday to Sunday, inclusive, who have worked during the day, may receive a minimum of two (2) hours due to weather conditions, or the finish of a ship or of a hatch (or upon the shifting of

a ship to drydock or to another terminal in the port), otherwise a guarantee of four (4) hours.

- (f) Men who have been ordered to report for work from Monday to Sunday, inclusive, at 5:00, 6:00, or 7:00 P.M. and have not worked during the day shall be paid until 11:00 P.M.
- (g) Men re-employed at 1:00 A.M. from Monday to Sunday, inclusive, shall receive a guarantee of four (4) hours with the exception of weather conditions or the finish of the hatch or of a ship when they shall receive a two (2) hour minimum.
- (h) If a ship is knocked off on account of inclement weather by the Ship's Master or his authorized representative, the men will be paid the applicable guarantee, but in the event the men knock off themselves, they will be paid only for the time worked, regardless of guarantee provided for in this Agreement.
- [fol. 18c] (i) Men employed between 8:00. A.M. and 12:00 Noon who continue working through the meal hour and are relieved at 1:00 P.M. shall be notified prior to 1:00 P.M. that they are finished for the day, or if ordered back at 2:00 P.M. shall receive three (3) hours' pay at the straight time rate, except when the ship or the hatch in which the men are employed completes discharging or loading in less time, they shall receive a minimum of two (2) hours' pay.
- (j) Gangs shall be knocked off at a reasonable time, not less than ten (10) minutes before quitting time, to replace hatch covers. The full gang shall be used to remove or replace hatch covers.

[fol. 18d] 28. Grievance Procedure: All disputes and grievances of any kind or nature whatsoever arising under the terms and conditions of this agreement, and all ques-

tions involving the interpretation of this agreement other than any disputes or grievances arising under the terms and conditions of paragraph 13(d) hereof, shall be referred to a Grievance Committee, which shall consist of two members selected by the Employers and two members selected by the Union. Either party in connection with any dispute or grievance where visual observation may be helpful in the resolution of the dispute or grievance may request that the joint Grievance Committee meet at job site. Either party may also request that the Arbitrator selected in accordance with the provisions hereinafter set forth appear at job site where a visual observation would aid in resolving the dispute or grievance, and the Arbitrator shall appear where possible at the same time that the Joint Grievance Committee appears at the job site, at which time in the event of a disagreement in the Grievance Committee, either party may request the Arbitrator to render an immediate decision at job site. Should the Grievance Committee be unable to resolve the issue sub-[fol. 18e] mitted and should neither party request an immediate decision from the Arbitrator, then the grievance or dispute shall be submitted to a Joint Grievance Panel consisting of three representatives of the Association and three representatives of the Union. To the end that there shall be no work interruptions and to the end that there shall be limited necessity for arbitration, the Panel shall make every effort to resolve all grievances or disputes which could not be resolved by the Grievance Committee. The Grievance Panel shall meet bi-weekly and shall not only attempt to resolve the grievances of the previous two weeks, unresolved by Grievance Committees, but shall also consider any prospective grievance that can be anticipated in the ensuing two weeks. Should the Panel be unable to resolve a grievance of dispute which arose in the previous two weeks, or be unable to resolve a grievance or dispute anticipated in the ensuing two weeks, the dispute or grievance, including matters of interpretation of

the contract, shall be referred to an Impartial Arbitrator who shall be selected to serve for a period of one year from a panel of five arbitrators to be submitted by the American Arbitration Association. From the panel of five, each side shall alternately strike two names each, and the person whose name remains shall be the Arbitrator. The Arbitrator thus selected shall conduct his hearings and procedures in accordance with the Rules of the American Arbitration Association, except that he shall be obliged to render his decision within forty-eight hours of the conclusion of his hearings or procedures. The term of office of the Arbitrator first selected shall expire September 30. 1960, at which time the parties may agree to renew the contract of the Arbitrator for an additional year, or either party may request the American Arbitration Association to submit a new panel of five names from which a new Arbitrator will be selected, as was the first Arbitrator. The same procedure shall be followed in the renewal of a [fol. 18f] contract of an Arbitrator and the selection of a new Arbitrator for the third year of this collective bargaining agreement. Should the terms and conditions of this agreement fail to specifically provide for an issue in dispute, or should a provision of this agreement be the subject of disputed interpretation, the Arbitrator shall consider port practice in resolving the issue before him. If the Arbitrator determines that there is no port practice to assist him in determining an issue not specifically provided for in the collective bargaining agreement, or no port practice to assist him in resolving an interpretation of the agreement, the issue shall become the subject of negotiation between the parties. There shall be no strike and no lock-out during the pendency of any dispute or issue while before the Grievance Committee, the Joint Panel, or the Arbitrator.

29. No Steamship Company or Contracting Stevedore and no official, District Council or Local of the International Longshoremen's Association shall make any change in this agreement nor render any interpretation of any provision thereof which shall be binding on any of the parties hereto. A difference of opinion regarding the meaning of any provisions of this agreement, which cannot be amicably adjusted between the parties, shall be adjusted in accordance with Article 28 hereof.

[fol. 18g] Signed at Philadelphia on the day and year first above written.

PHILADELPHIA MARINE TRADE ASSOCIATION

By: R. J. Hughes, President
Alfred Corry, Chairman
F. H. Muldoon
J. N. Russell
Herman Meyle
H. W. Jackson
W. J. Gilfillan
J. C. Crueger
Herbert Brodhag
W. S. Oberholtzer

Frank J. Lynch

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION (AFL-CIO)

By: James T. Moock, International Vice-President
Clifford Carter, Vice-President, A.C.D.
Richard L. Askew
Martin Welsh
Joseph S. Kane
John J. Smith
Paul Johnson, Jr.
Alexander Talmadge, El.
E. Carter Lyles
Wm. Bailey
Russell Williams
Ernest Terry

[fol. 19]

EXHIBIT C TO COMPLAINT

In the Matter of the Arbitration between Philadelphia Marine Trade Association and

International Longshoremen's Association (A.F.L.-C.I.O.) Local 1291

OPINION OF ARBITRATOR

. Three hearings were held in the above entitled matter, on Friday, April 30, 1965; Monday, May 3, 1965 and Wednesday, May 5, 1965.

Friday, April 30, 1965.

BEFORE:

MILTON M. WEISS, Esq., Arbitrator 2101 Chestnut Street Philadelphia, Pennsylvania

[fol. 20]

APPEARANCES:

Abraham E. Freedman, Esq. 1415 Walnut Street Philadelphia, Pennsylvania

for International Longshoremen's Association

Francis A. Scanlan, Esq. 926 Four Penn Center Plaza Philadelphia, Pennsylvania

for Philadelphia Marine Trade Association

PRESENT

On Behalf of International Longshoremen's Association, Local 1291:

RICHARD L. ASKEW, President, Local 1291

JAMES T. MOOCK, International Vice President

ALEXANDER TALMADGE, Business Agent, Local 1291

PAUL JOHNSON, Business Agent, Local 1291

EDWARD DEVINE, Business Agent, Local 1291

JOHN SMITH, Business Agent, Local 1291

JOSEPH KANE, Secretary Treasurer, Local 1291

WILLIAM GOSNEAR, President, Local 1366

AARON DANIELS, President, Local 1332

[fol. 21] On Behalf of Philadelphia Marine Trade Association:

ALFRIC CORRY, Executive Secretary
JOSEPH RUSSELL
JAMES TRAINER, Secretary
HERBERT BRODHAG
JOHN PINNELL

Monday, May 3, 1965

APPEARANCES:

ABRAHAM E. FREEDMAN, Esq. 1415 Walnut Street
Philadelphia, Pennsylvania

for International Longshoremen's Association

Francis A. Scanlan, Esq. 926 Four Penn Center Plaza Philadelphia, Pennsylvania

for Philadelphia Marine Trade Association

PRESENT

On Behalf of International Longshoremen's Association, Local 1291:

RICHARD L. ASKEW, President, Local 1291
JAMES T. MOOCK, International Vice President
ALEXANDER TALMADGE, Business Agent, Local 1291
PAUL JOHNSON, Business Agent, 1291
[fol. 22]

Edward Devine, Business Agent, Local 1291
John Smith, Business Agent, Local 1291
Joseph Kane, Secretary Treasurer, Local 1291
WILLIAM GOSNEAR, President, Local 1566
AARON DANIELS, President, Local 1332

ON BEHALF OF PHILADELPHIA MARINE TRADE ASSOCIATION:

ALFRED CORRY, Executive Secretary
JOSEPH RUSSELL
JAMES TRAINER, Secretary
HERBERT BRODHAG
JOHN PINNELL

Wednesday, May 5, 1965

APPEARANCES:

ABRAHAM E. FREEDMAN, Esq. 1415 Walnut Street Philadelphia, Pennsylvania

for International Longshoremen's Association

Francis A. Scanlan, Esq. 926 Four Penn Center Plaza Philadelphia, Pennsylvania

for Philadelphia Marine Trade Association

PRESENT

On Behalf of International Longshoremen's Association, Local 1291:

[fol. 23]

RICHARD L. ASKEW, President, Local 1291
JAMES T. MOOCK, International Vice President
ALEXANDER TALMADGE, Business Agent, Local 1291
PAUL JOHNSON, Business Agent, Local 1291
EDWARD DEVINE, Business Agent, Local 1291
JOHN SMITH, Business Agent, Local 1291
JOSEPH KANE, Secretary Treasurer, Local 1291
WILLIAM GOSNEAR, President, Local 1566
AARON DANIELS, President, Local 1332

ON BEHALF OF PHILADELPHIA MARINE TRADE ASSOCIATION:

ALFRED CORRY, Executive Secretary
JOSEPH RUSSELL
JAMES TRAINER, Secretary
HERBERT BRODHAG
JOHN PINNELL

[fol. 24]

1. FACTS:

The Philadelphia Marine Trade Association, hereinafter called the "Employer" and the International Longshoremen's Association, Local No. 1291, hereinafter referred to as the "Union," are parties to a Memorandum of Settlement dated February 11, 1965 (Joint Exhibit No. 1).

On or about 7:40 A.M., April 26, 1965, a representative of the Union observed several gangs at various companies along the Philadelphia waterfront, including T. Hogan Corporation, J. A. McCarthy Company, Murphy Cook Company, etc., who had been hired to begin work at 8:00 A.M., but who had been informed by the Employer that they were set back to report back for work at 1:00 P.M. There was some disagreement between the Employer and the Union as to the reason for the setback, the Union contending that the Employer in most instances had given incle-

ment weather as the reason; the Employer, on the other hand, endeavoring to how during the Hearing that the weather was not inclement during the early morning hours.

Testimony during the Hearing indicated that there had been some prior discussion between the Employer and the Union concerning the interpretation of the following clauses in the Memorandum of Settlement dated February 11, 1965 referred to above:

"10. Hiring System

(5) For work commencing at 8 AM on Monday or at 8 AM on the day following a holiday, employers to have the right because of non-arrival of a vessel in port to cancel the gangs by 7:30 A.M.

[fol. 25]

(6) Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period unless employed during the morning period."

2. Issue Involved:

Whether the provisions in the Memorandum of Settlement referred to above, i.e., Section 10, subparagraphs 5 and 6, are to be considered together so that the Employer's right to set back a gang from 8:00 A.M. to 1:00 P.M. is conditioned solely-upon the non-arrival of a vessel in port, or is the Employer's right under Section 10, subparagraph 6 to set back a gang without qualification?

POSITION OF THE PARTIES

3. EMPLOYER'S CONTENTION:

The Employer contends that paragraph 10(6) of the Memorandum of Settlement gives the Employer the right

to set back a gang without qualification. Their contention is based upon the language used in the agreement and precontract negotiations. Towards that end the Employer introduced testimony at the Hearing to show that one of the major changes in the new contract related to the Hiring System. In other words, under the old contract there was a daily hire from Monday to Saturday and for work to commence at 8:00 A.M. in the morning the Employer hired at 7:30 A.M. on the same day. If the Employer did not want to hire any of his longshoremen he had a right to say that there was no work today and the employees were dismissed, without any payments made by the Employer at all. (Notes of Testimony, page 42).

[fol. 26] It was further stated by the Employer that under the terms of the new contract, as it related to Hiring System, the Employer had agreed to a day before hire. This meant, therefore, that if a worker was needed for 8:00 A.M. start tomorrow morning, an order would have to be placed by the Employer by 4:00 P.M. of the previous afternoon. The Employer has no right to cancel such hire unless the ship does not arrive on a Monday or a day following a holiday, in which case the Employer could cancel by 7:30 A.M. of the day of scheduled work. (Notes of Tes-

timony, page 43).

It was the Employer's further contention that day before hire was tied in with the guaranteed income plan provided for in the new contract. Employer's testimony emphasized that day before hire also carried with it the right of the Employer to set back gangs ordered for an 8:00 A.M. start Monday through Friday if such set back was invoked by the Employer by 7:30 A.M. on the day of work to commence. The setback under these circumstances as provided by Section 10(6) was from 8:00 A.M. to 1:00 P.M., at which time a four hour guarantee would apply, plus one hour guarantee for the morning period. The Employer made reference to Union Exhibit No. 2, titled "Central Hiring Point" which was a proposal of the Employer made on or about January 7, 1965. Among the items proposed was that

having to do with the Hiring System and in that proposal, paragraph 5 under Hiring System provided as follows:

"For work commencing at 8:00 A.M. on Monday or the day following a holiday, employers to have the right for any reason to cancel the gang."

[fol. 27] In the same proposal paragraph 6 under Hiring

System provided:

"Gangs ordered for an 8:00 A.M. start Monday to Friday can be set back to commence at 1 PM at which time a four hour guarantee shall apply."

Employer testified that the above proposals were rejected by the Union. "They wanted no cancellation rights at all, at first, and they wanted no push back rights. They would give us no push back rights." (Notes of Testimony, page 48). The Employer further testified that a final offer was made by the Employer on February 5, 1965, as contained in Union Exhibit No. 3 titled "Final Offer by Philadelphia Marine Trade Association to International Longshoremen's Association, Local 1291." Among the proposals contained therein was Section 10(5) and (6) relating to the Hiring System providing as follows:

- "(5) For work commencing at 8 AM on Monday or at 8 AM on the day following a holiday, employers to have the right because of non-arrival of vessel in port to cancel the gangs by 7:30 A.M.
 - (6) Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 A.M. on the day of work to commence at 1 P.M. at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period."

The Employer testified at the Hearing that set back rights were explained to the Union and this can best be reflected by the following extract from the Notes of Testimony, page 52:

[fol. 28]

"Q. Will you tell us what explanation was given?

A. Yes. I, for one, as one of the spokesmen for our association, very specifically stated a number of times —the Union wants to know just what we meant as set back rights, what conditions and what-have-you, and we mentioned because of inclement weather, No. 1, and because of the possibility of non-arrival of cargo, because of a gear failure on a vessel, and we pointed out to them, time and again, I know that I pointed out to them time and again, that under this set-up here, that the men were being guaranteed unequivocally on the day before hire, with the set back privileges guaranteed a minimum of four-hours pay, and a possible five-hours pay, if we exercised the set back rights."

The testimony of the Employer was to the effect that none of the Union representatives stated during negotiations that set back rights applied only to the non-arrival

of a vessel in port (Notes of Testimony, page 53).

Employer testimony alleged that Section 10(6) in the Memorandum of Settlement dated February 11, 1965 was in fact agreed to on February 5, 1965 and between those dates the Union did not ask for any qualifications to be inserted with respect to Section 10(6). (Notes of Testimony, page 56). There were several other Employer witnesses who in a general way testified along similar lines as set forth above.

[fol. 29] It was made clear by Employer testimony that if a man had been hired the day the ship was worked and for any reason he could not continue working he was guaranteed four hours for the morning. (Notes of Testimony, page 124). It may be stated in a general way that it was the Employer's testimony that the language set forth in Section 10(5) and 10(6) was unambiguous; that they should not be considered together, but that they were the result of much negotiation between the parties, and further that there had been changes concerning Section 10(5) and 10(6)

during the course of negotiation, none of which resulted in providing for the non-arrival of a ship as a condition precedent to the right of the Employer to invoke Section 10(6).

4. THE UNION'S CONTENTION:

The Union contends that paragraph 10(6) of the Memorandum of Settlement gives the Employer the right to set back a gang from an 8:00 A.M. start to 1:00 P.M. only in case of the non-arrival of a vessel in port. To support this contention Union testimony contended that there were many discussions with respect to Section 10(5) and Section 10(6); that they were treated together and that neither Section 10(5) nor Section 10(6) could be invoked except for non-arrival of a ship. (Notes of Testimony, page 165 and 166). It was the Union's further contention that Section 9(h) of the previous Collective Bargaining Agreement remained intact except for the modification contained in . Section 10(5) of the Memorandum of Settlement. (Notes of Testimony, page 167). The Union further testified that on April 21st or April 22nd, there was discussion with Employer representatives concerning the interpretation of [fol. 30] Section 10(6), Employer representative requesting the right to push back for any reason under Section 10(6) and the Union representative taking the position that the right to push back under Section 10(6) was for nonarrival of a vessel only. (Notes of Testimony, page 168).

It was the Union's further contention that one of the major reasons that they went along with the Employer on the question of outright cancellation on a Monday and a day following a holiday was because the New York and Baltimore contracts contained similar provisions. (Notes of Testimony, page 183, 184).

The Union contention is further that during negotiation the Employer representative was asked for an explanation concerning Section 10(6) at which time it was testified the Employer representative stated that Section 10(6) only was applicable in the case of non-arrival of a ship. (Notes of Testimony pages 203 and 204). Union representative denied that during negotiation the Employer representative stated that Section 10(6) would apply to the non-arrival of cargo, to the breakdown of a ship's gear and for inclement weather, etc.; that the only reason given by the Employer representative for invoking Section 10(6) was the same as that relating to Section 10(5), viz. non-arrival of a ship. (Notes of Testimony, page 204).

The Union contention in relation to the interpretation of Section 10(6) is reflected in the following testimony on

page 206 of the Notes of Testimony:

"A. In the employers' proposal, with respect to 10.5, they sought to have the right to cancel for any condi[fol. 31] tion or any reason, I believe they said. They had no such language, insofar as No. 6 was concerned. Therefore, we asked them, what do you mean by No. 6, what are you going to do? Finally, when they got down to a point where we were somewhat in agreement, insofar as No. 5 and 6 were concerned, except that we wanted some clarification as to what they really wanted with respect to No. 6. They said cancellation for nonarrival of the ship. Muldoon said that."

The Union testimony as to why the words "non-arrival of the ship" was not provided for in Section 10(6) can best be reflected from the Notes of Testimony, page 233:

"The Witness: It is not in No. 6, for two reasons. One is, as Mr. Muldoon explained to me, that the push backs would be made only for the non-arrival of a ship.

And the other reason is that the employers insisted, throughout the negotiations, that we should reach the point where we could trust each other. And I took what they said as being true, that they would not try to invoke Clause 10.6, except in cases of non-arrival of the ship. I didn't ask too many questions about it, and there wasn't too much said about it."

It was the union testimony that Section 10(6) was to be for set back purposes only and the only circumstance under which it was applicable was because of non-arrival of a ship. (Notes of Testimony page 41).

[fol. 32] There was further Union testimony concerning the interpretation of Section 10(6) reflected on page 278 of

the Notes of Testimony:

"By Mr. Freedman:

- Q. We are talking about the push back now. What was the reason which the employers gave for the push back?
 - A. The non-arrival of the vessel.
 - Q. Did they give any other reason?
 - A. No. There was no other reason."

The Union contended in its testimony that Section 10(5) and 10(6) were considered together, and that it was the Union position that they would go along with the set back provision in Section 10(6) only because of non-arrival of a ship. (Notes of Testimony, page 285).

There was additional testimony by other Union witnesses that during negotiation the only reason the Employer could invoke the push back clause as contained in Section 10(6) was because of non-arrival of a ship. (Notes of Testimony,

pages 299, 307, 312 and 313).

In summation, therefore, it can be stated that the Union testimony was to the effect that Section 10(5) and 10(6) of the Memorandum of Settlement should be considered together and that the application of both of these sections was limited to the non-arrival of a vessel in port.

5. Discussion:

After a careful review of the testimony and the numerous exhibits produced at the Hearing, it becomes the Arbitra-[fol. 33] tor's responsibility to rule as to the meaning of Section 10(6) of the Memorandum of Settlement dated February 11, 1965. It would be superfluous to review the

testimony, much of which has been set forth in the Union and Employer Contentions above. It is the Arbitrator's opinion that if the language of an agreement is clear and unequivocal, generally a meaning other than that expressed will not be applied. This is true even though the parties to an agreement as in this case disagree as to its meaning. If the language is unambiguous it is the responsibility of the Arbitrator to enforce the clear meaning. Section 10(5) and 10(6) of the Memorandum of Settlement provides as follows:

"10. Hiring System

- (5) For work commencing at 8 AM on Monday or at 8 AM on the day following a holiday, employers to have the right because of non-arrival of a vessel in port to cancel the gangs by 7:30 A.M.
- (6) Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period unless employed during the morning period."

It may be well initially to analyze Section 10(5) in the light of prior negotiations. Precontract negotiations frequently provide a valuable aid in the interpretation of provisions of an agreement. In the instant case, reference is made to the Employer's proposal of January 7, 1965, Union Exhibit No. 2. Reference to paragraph 5 under the caption "Hiring System" provides as follows:

[fol. 34] "For work commencing 8 AM on Monday or the day following a holiday Employers to have the right, for any reason, to cancel the gang."

The wording set forth above was not contained in the Memorandum of Settlement. Instead, subsequent to negotiation

between the parties under date of February 5, 1965 a proposal was made by the Employer contained in Union Exhibit No. 3 titled "Final Offer by Philadelphia Marine Trade Association to International Longshoremen's Association, Local No. 1291." Reference to Section 10 marked "Hiring System" Subsection (5) reflects the following:

"For work commencing at 8 AM on Monday or at 8 AM on the day following a holiday, employers to have the right because of non-arrival of a vessel in port to cancel the gangs by 7:30 A.M."

It should be noted as reflected in the Notes of Testimony that this change came about as a result of negotiation by the parties, and instead of a wide latitude contained in original proposal set forth above dated January 7, 1965, there was a major change limiting the rights of cancellation of gangs to a single reason, viz. non-arrival of a vessel in port. This section was written into and became part of the Memorandum of Settlement dated February 11, 1965. Although this particular section is not at issue, it is important, nevertheless, to show that initially there was disagreement between the parties as to the wording of the provision which was changed after continued negotiation and discussion.

[fol. 35] Directing our attention now to Section 10(6) of the Memorandum of Settlement dated February 11, 1965, it may be well to review prior negotiations as to this section in order to arrive at its meaning. Here again reference to the Employer's proposal of January 7, 1965, Union Exhibit No. 2, under the title "Hiring System," paragraph No. 6, reflects the following:

"Gangs ordered for an 8 AM start Monday to Friday can be set back to commence at 1 PM at which time a four hour quarantee shall apply."

The parties could not agree on this wording and subsequent to discussion and negotiation, much of which is re-

flected in the testimony, there was submitted on February 5, 1965 as reflected in Union Exhibit No. 3, "Final Offer by Philadelphia Marine Trade Association to International Longshoremen's Association, Local No. 1291" the following section under Section 10 "Hiring System" subsection 6:

"Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period."

Reference to the Notes of Testimony indicate that at one point, the Union argued for a two hour guarantee for the morning period; however, after much discussion and negotiation this particular section is reflected in the Memorandum of Settlement of February 11, 1965 as follows:

[fol. 36] "Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period unless employed during the morning period."

It is obvious, therefore, that changes in the provisions were made based upon contentions and negotiations of both parties until the wording was finalized. It is the contention of the Employer that the language in Section 10(6) is clear and that the right to set back is without qualification. In this regard it should be noted that this section provides a possible 5 hour guarantee to the worker, one hour for the morning period and 4 hours for the afternoon.

It is the Union contention that during negotiations Section 10(5) and 10(6) were considered together and that the restriction in the application of Section 10(5) viz. non-arrival of a vessel in port, is applicable to Section 10(6). This contention is based upon testimony of Union representatives as to the explanation of Section 10(6) given by

the Employer during negotiations. On the other hand, the testimony of Employer representatives relating to the same subject is in direct contradiction, i.e. that the Employer representatives explained to the Union representatives during negotiations that the set-back provision contained in Section 10(6) would not be limited to the case of non-arrival of a vessel in port, but would also be applicable for other reasons such as inclement weather, breakdown of a ship's gear, non-arrival of cargo, etc.

[fol. 37] It is the Arbitrator's opinion that this Section 10(6) of the Memorandum of Settlement dated February 11, 1965 is clear and unequivocal and should not be given meaning other than expressed. If the Arbitrator were to read into Section 10(6) the limitation urged on him by the Union, i.e. applicable only in case of non-arrival of a vessel in port, he would in effect be writing into the Memorandum of Settlement something which is not there. The Arbitrator has carefully reviewed the testimony as well as exhibits relating to the negotiations between the parties which resulted in their final agreement. It is quite obvious that the document finally agreed upon was the subject of much discussion and negotiation, and both parties had ample opportunity to modify and change these provisions before the final instrument was drawn. A review of the negotiations set forth above relating to Section 10(5) and 10(6) indicates clearly that there was much discussion and negotiation before the final draft which was contained in the Memorandum of Settlement dated February 11, 1965.

For the reasons set forth above, the Arbitrator makes an Award as follows:

6. AWARD:

The contention of the Employer, the Philadelphia Marine Trade Association, is hereby sustained and it is the Arbitrator's determination that Section 10(6) of the Memorandum of Settlement dated February 11, 1965, providing gangs "ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence

at 1 PM, at which time a 4 hour guarantee shall aprily. A 1 hour guarantee shall apply for the morning period uness employed during the morning period," may be invoked by

the Employer without qualification.

[fol. 38] The contention of the Union, the International Longshoremen's Association, Local No. 1291, that Section 10(6) of the Memorandum of Settlement dated February 11, 1965, referred to above, can only be invoked by the Employer because of non-arrival of a vessel in port, is denied.

/s/ Milton M. Weiss Milton M. Weiss, Arbitrator

Dated: June 11, 1965. Philadelphia, Pennsylvania

[fol. 39]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 38647

[Title omitted]

ORDER—August 2, 1965

And Now to Wit, this second day of August, 1965, upon consideration of the within complaint and upon motion of Kelly, Deasey & Scanlan, Esquires, counsel for the plaintiff, the defendant is hereby ordered to show cause why it has not complied with the Arbitrator's Award of June 11, 1965.

Hearing shall be held on the within complaint on Tuesday,

the 3rd day of August, 1965 at 11:00 A.M.

By the Court, R. Body, J.

[fol. 40]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA Civil Action No. 38647

.[Title omitted]

MOTION TO DISMISS COMPLAINT

Defendant, International Longshoremen's Association, Local 1291, moves this Honorable Court to dismiss the Complaint in this matter for the following reasons:

- 1. The plaintiff has failed to state a claim upon which relief can be granted, insomuch as it has prayed this Court to order the defendant to show cause why it should not comply with the Arbitrator's Award of June 11, 1965, but the facts pleaded fail to allege facts to support non-compliance with any such Award.
- 2. The relief sought by the plaintiff is, in fact, injunctive relief which Federal Courts are without jurisdiction to grant by virtue of Section 4 of the Norris-LaGuardia Act, 29 U.S.C., Sec. 104. See Sinclair Refining Company v. Samuel M. Atkinson, et al., 370 U.S. 195, 8 L. Ed. 2d 440, 82 S. Ct. 1328.

Wherefore, it is prayed that this Honorable Court dismiss the Complaint.

Freedman, Borowsky and Lorry, By Joseph Weiner, Attorneys for Defendant. [fol. 41]

In the United States District Court For the Eastern District of Pennsylvania Civil Action No. 38647

[Title omitted]

Hearing Re: Order to Show Cause—August 3, 1965
Philadelphia, Pa.

Before Hon. Ralph C. Body, J.

PRESENT:

Kelly, Deasey and Scanlan, by William R. Deasey, Esq. and Francis A. Scanlan, Esq., for plaintiff.

Freedman, Borowsky and Lorry, by Joseph Weiner, Esq., and Avram G. Adler, Esq., for defendant.

[fol. 42] The Court: Gentlemen, we will proceed with the hearing now in the matter of the Philadelphia Marine Trade Association against the International Longshoremen's Association, Local 1291, piers of southwest Philadelphia, Civil Action No. 38647.

I have been waiting for a message to come from my chambers so that when that message comes there will be an interruption.

Mr. Weiner: If Your Honor please, Joseph Weiner of Freedman, Borowsky and Lorry. Mr. Adler is with me from our firm.

Before we get started I would like to file with the Court a motion to dismiss the complaint on jurisdictional grounds since it is our position that the plaintiff's prayer here is for injunctive relief and that the Federal court under Norris-LaGuardia does not have authority to grant injunctive relief in cases arising out of labor disputes. STATEMENT BY MR. DEASEY ON BEHALF OF THE PLAINTIFF

Mr. Deasey: May it please the Court, my name is William Deasey of the law firm of Kelly, Deasey and Scanlan who are counsel for the Philadelphia Marine Trade Association.

Your Honor, contrary to what Mr. Weiner has stated we have set forth a complaint on behalf of the Philadelphia Marine Trade Association against the International Longshoremen's Association, Local 1291—

The Court: Not quite so fast.

Mr. Deasey: —stating that the action arises under the provisions of the Labor Management Relations Act, specifically Section 185 of the United States Code, Title 29, or Section 301 of the Act as it is commonly known.

[fol. 43] The gravamen of our complaint is simply this, that on June 11, 1965, under the terms of the currently existing collective bargaining agreement an arbitrator by the name of Milton Weiss handed down an arbitration award relative to certain terms of the contract between the parties.

In accordance with the terms of the contract, specifically Section 10(6), the employer has the right to set-back certain gangs when hired. Recently a determination, or, rather, a dispute arose with regard to the implementation of this particular arbitrator's award and specifically the issue arose on July 30, last Friday, and at that time when the employer attempted to set-back certain gangs which he had hired the day before for work on July 30, the union took the position that they would not abide by the arbitrator's award.

We believe that this is, first of all, a breach of the contractual obligation which the union has undertaken. It certainly is a repudiation of the arbitrator's award, and, contrary to the position stated by the counsel for the defendant, we are before the Court at the present time asking for an order for specific performance, to wit, an order

which would force the union to comply with the terms of the arbitrator's award.

We believe that the action is well taken under the law, as I stated before, the Labor Management Relations Act, 1947, specifically Section 301, and that case law has since sustained the position, namely, the Lincoln Mills case, and also the Steelworkers v. Enterprise Wheel and Car Corporation, the Lincoln Mills case being 353 United States 448, the Steelworkers case being 363 U.S. 593.

The Court: Mr. Weiner?

[fol. 44]

STATEMENT BY MR. WEINER ON BEHALF OF DEFENDANT

Mr. Weiner: Yes, sir. If it please the Court, we feel that the relief requested by the plaintiff as we previously stated is actually for an injunction, and under the Sinclair Refining Company v. Atkinson case, a copy of which I have here if Your Honor would care to see it, a Supreme Court case which is clearly on all fours, it clearly states that in the circumstances the Federal court has no jurisdiction to enter an injunction for any kind of injunctive relief.

In the Sinclair case the prayer was also for an order to compel compliance with the contract and the Court in a five-to-three decision, five to two with one Justice abstaining, clearly stated that the Norris-LaGuardia Act was not affected in this respect by the Taft-Hartley Act, that the prohibition against injunctions is in full force, and that under no circumstances in a case evolving out of a labor dispute can a Federal court grant an injunction. I have prepared a counterstatement of the case for Your Honor's convenience.

I would like to point out to Your Honor that actually this is not a case which arises in contravention of this arbitrator's award. We, that is, the union, makes no bones about the fact that they are unhappy with the arbitrator's award, but we realize that we are stuck with it.

This dispute which arose on Friday did not in our opinion arise within the framework of the arbitrator's

award. Briefly what happened was that back in April a dispute arose about a provision in the bargaining agreement between the union and the PMTA. Actually what had been signed was a memorandum of agreement which has not yet been reduced to a formal agreement, but to all intents and purposes, this is the contract that we are working with as it supplements the original agreement.

[fol. 45] Section 10(5) of the agreement provides that on Mondays and on days following a holiday the employer can under certain circumstances by 7:30 in the morning cancel a gang that has been hired. It is important for Your Honor to know that this bargaining agreement which we are now considering is an unusual one and a novel one on the Philadelphia waterfront because it provides that the gangs that do the waterfront work, longshore work, are now hired the day before they go to work. It used—

As I started to say, this contract which we are presently working under which is in effect since last October is a novel one for the Philadelphia waterfront because it provides for the first time that the gangs of men who are hired to work the ships be hired the day before they are to go to work. It used to be that the men used to shape-up every morning. They used to go down on the waterfront and wait around, and at 7:00 o'clock they were hired to go to work at 8:00, and if there was no work that day they went home, and if there was no work until later in the day, they would have to hang around until they were hired.

The Court: Now what does the new agreement provide? Mr. Weiner: The new agreement provides that the men are hired the day before at a central hiring point which is down under the Walt Whitman Bridge.

[fol. 46] The Court: Then they show up for work when? Mr. Weiner: They report for work either at 8:00 o'clock the following morning or 1:00 o'clock the following afternoon, or in the case of Saturday morning, Sunday morning

or Monday morning, they are told when they are hired when and where they are to report for work.

The Court: Now they report to work for 7:30?

Mr. Weiner: They report to work at 8:00 o'clock.

The Court: 8:00 o'clock?

Now, what does this word "setback" mean?

Mr. Weiner: Now the word "setback" means-

The Court: If there is no work for them, then what?

Mr. Weiner: Once they are hired and they report for work at 8:00 o'clock they are entitled to a minimum of four hours' pay under the contract. There are two provisions which-

The Court: Minimum pay of four hours?

Mr. Weiner: That's right, once they report for work at 8:00 o'clock.

The Court: And even if there is no work?

Mr. Weiner: Even if there is no work, because the minute—the shipping company knows the day before, the stevedoring company knows whether or not there is going to be work. That's why they hire them the day before because they know what ships are coming and then hire specifically the number of gangs for each ship.

The Court: The ship may be down the Delaware some-

where.

[fol. 47] Mr. Weiner: That's where we get to these two provisions that provide for setback and cancellation. There

are two provisions.

Section 10, subparagraph 5, provides for cancellation of a gang before 7:30 on a Monday morning or a day following a holiday strictly for the non-arrival of a vessel. In other words, if they had expected a vessel in on a Monday morning, therefore, they hired a gang on Friday, Monday morning the vessel didn't show up, the stevedore company notifies the men before 7:30 that the vessel has not showed up and they can cancel.

The Court: Then what? Mr. Weiner: That's it.

The Court: Then they are entitled to four hours' pay?

Mr. Weiner: No.

The Court: If they are notified before 7:30 they are notentitled to anything?

Mr. Weiner: There is a cancellation provision that provides for cancellation.

The Court: If they are notified at 8:00 o'clock?

Mr. Weiner: No, if they are notified at 8:00, they are entitled to their four hours. They have to be cancelled by 7:30. The provision that we are—

The Court: In other words, it permits them to work for

somebody else?

Mr. Weiner: That's right, or go home.

[fol. 48] The provision that we are concerned with this morning primarily is a provision, Paragraph 10, Subsection (6) of the agreement which is Exhibit "C", I believe, to the complaint, which provides that Monday through Friday the stevedoring company may set back the gang until 1:00 o'clock if the men are notified at 7:30, and that's the position that gave rise to the dispute which is before Your Honor today.

Now, these two provisions—primarily, the setback provision—were the subject of an arbitrator's award back in April, and the arbitrator decided contrary to the union's position that this setback could be invoked for any reason, not only for non-arrival of a vessel or for inclement weather. It had been the union's position—it still is—although it is most now—that the setback could only be for specific reasons, either for non-arrival of a vessel, for inclement weather, or for compelling reasons like that which was not within the control of the employer.

In any event, the provision clearly provides that if there is to be a setback the men must be notified at 7:30 A.M., and if they are notified at 7:30 they receive one hour's pay, and then if they work later in the day, they will get paid for whatever time they work. However, if they are not notified at 7:30, and if they actually report to the job at

8:00 o'clock, it is our position that the four-hour guarantee

comes into plage

However, I should like to point out to Your Honor that I don't think we need get into all of that today for this reason: First, I think that our objection on the jurisdictional ground is a very strong one and a valid one, and I [fol. 49] think that if Your Honor will see fit to consider that, we would like to submit briefs on that point, and if Your Honor agrees with us, that will be the end of it.

The matter is now a moot one since the men involved in this particular dispute were this morning paid by the employer the four hours which they claim they were entitled to receive and they are presently working at Pier 179 and Pier 181 on the two ships involved, so it is not a question of getting the men back to work; they are back to work.

The Court: All the men are back to work that we are concerned with on this particular ship?

Mr. Weiner: Absolutely, two ships.

The Court: I read, of course, the complaint and at the time that the averments were placed they were not back to work.

Mr. Weiner: Yesterday they were not back to work. This morning—

The Court: Was it yesterday?

Mr. Weiner: What is that?

The Court: I don't know what date was averred, whether it was Friday or yesterday.

Mr. Weiner: The dispute arose Friday morning. The ship did not work Friday; she did not work Saturday.

The Court: If the question is moot, why do we have a hearing?

Mr. Weiner: I don't know. I would like my opponent to answer that.

The Court: If the men are back at work—
[fol. 50] Mr. Deasey: Your Honor, it is true that the men have gone back to work today. We don't believe that the question is most because the question as stated in our

complaint is a very vital one and that is this, that the union has taken the position at least to representatives of the PMTA and also to the employer's representatives that they do not intend to abide by the positions of the arbitrator's award, and I am referring in all instances now to the June 11 award with respect to 10(6) of the contract, and we think this is vital because while it is true that the men went back today to work, the employer had to put them back because of economic duress. He was obliged by his principals to put the men back to work.

This is not a solution to a problem on the waterfront. We believe that we are entitled to a legal solution to a problem which has arisen under the terms of the contract and which the union has at least up to today or up to this morning at least taken the position they do not intend to abide

by the terms of the arbitrator's award,

The Court: Well, they haven't taken that position this morning.

Mr. Deasey: Well, Your Honor-

The Court: If I understand Mr. Weiner correctly, they don't take that position now. They just don't like the referee's position or arbitrator's position.

Mr. Weiner: We do not take that position.

The Court: What?

Mr. Weiner: And we have never taken the position. We have taken the position that although we don't like this award we are going to follow it, but we are also going to insist that the employer follow the award and follow the contract to the letter.

[fol. 51] The Court: Well, now, I thought, Mr. Weiner, you had. Wait a minute. There was a little double talk in what you said, but I believe maybe now I didn't understand you.

Mr. Weiner: All right.

The Court: One of the situations you said was that—I didn't quite understand because I understand from the lawyer for the plaintiff, Mr. Deasey, in his statement and

then in yours, the latter part of your statement, that if the men were shaped up on a Friday to come in on Monday and they came in on Monday, and there was no work there because the ship hadn't arrived, inclement weather or something, then they were told to come back at 1:00 o'clock. I understood from him, Mr. Deasey, that they were entitled to one-hour's pay, and from 1:00 o'clock on, regular pay.

Is that right, Mr. Deasey?

Mr. Deasey: Your Honor, no, sir. May I correct that? We are talking about two different provisions of the contract.

What Mr. Weiner related to was the provision of 10(5) which relates to cancellation. That is not involved in this particular case nor is it involved in—

The Court: Well, cancellation, on cancellation-

Mr. Deasey: Cancellation, the men den't get anything.

The Court: Yes, but if the cancellation doesn't take place until a certain time, they get paid. Isn't that right?

Mr. Deasey: This is correct, as far as cancellation is concerned.

The Court: In view of the fact that I am thoroughly confused, let's start over again.

[fol. 52] Mr. Deasey: Very well.

The Court: I want to know under what situation they are entitled to the one-hour pay and when they are not entitled to one-hour pay.

Mr. Deasey: Very well, sir.

The Court: One question at a time. Now, when are they entitled to that?

Mr. Deasey: They are entitled to the one-hour pay when a gang, having been ordered on the day before, is notified prior to 7:30 on the succeeding morning that for whatever reason they, the gang, will be set back until 1:00 o'clock. At that time, they are entitled there to one-hour's pay at that particular time, and they are entitled to come back at 1:00 o'clock to work.

If they do not work at 1:00 o'clock they are entitled to four hours' pay, so that in toto, if they do not work the day after they have been notified that they will be hired—

The Court: They get paid for five hours? Mr. Deasey: Five hours, that is correct.

The Court: For not working?

Now, I understood from him that they got four hours. Now, is he right, Mr. Weiner?

Mr. Weiner: Well, he is right and he is wrong, because it depends on the factual situation.

A gang is hired on Thursday.

[fol. 53] The Court: For-

Mr. Weiner: At 4:00 o'clock.

The Court: For-

Mr. Weiner: To report to work at 8:00 A.M. on Friday morning aboard a particular vessel at a particular pier.

The Court: Yes.

Mr. Weiner: Now, Section 10(6) of the contract which is the one that we are concerned with reads as follows—let me read it so Your Honor knows what we are talking about:

Gangs ordered for an 8:00 A.M. start Monday through Friday can be set back—that is, their starting time can be pushed back—at 7:30 A.M. on the day of work to commence at 1:00 P.M. at which time a four-hour guarantee shall apply—that's at 1:00 o'clock—a one-hour guarantee shall apply for the morning period until employed during the morning period.

Now, a man hired at 4:00 o'clock on Thursday as he was in this case, and he is told that, "8:00 o'clock tomorrow-morning you report aboard the Steamship 'Skaugran' which is going to be at Pier 179, Port Richmond, Philadelphia, and go to work." Our man shows up there at 8:00 o'clock. He has not received any notification that there is going to be a setback, and at 8:00 o'clock he is told, "The vessel is not here; she couldn't get into the pier,"—whatever the reason was—"Come back at 1:00 o'clock."

The guy says, "I will be happy to come back at [fol. 54] 1:00 o'clock, but since you didn't notify me at 7:30, which is what your contract provides, I want to get paid for my morning's work because I came here ready to work."

Now, this is in a sense what the dispute is about. Mr. Deasey says that he is entitled only to the one hour for the morning. We say that since he was not notified at 7:30 as the contract provides, he is entitled to the four hours.

But again I say to Your Honor that the question is moot today because this morning these men involved in these particular disputes-and there are two of them, two disputes—

The Court: What do you mean, two disputes, two ships?

Mr. Weiner: Two ships.

The Court: Two ships, two piers?

Mr. Weiner: Two ships, two piers, one at Pier 179, the S.S. "Skaugran," and one at Pier 181, the S.S. "Nego Victoria"—seven gangs, ten gangs all together, 220 men. These men were paid this morning the four hours' pay they claimed they were entitled to receive and they are working. They have been working since 8:00 o'clock this morning on both ships, so I don't know what relief Mr. Deasey wants from you. The men are at work.

Mr. Deasey: May I say this, Your Honor, that my statement with regard to the guarantee is correct and I don't think what Mr. Weiner has said derogates against it in any way watsoever. What he has tried to do now is inject a factual issue. We are going on the basis that this is a legal issue to be determined, whether or not the arbi-

trator's award is entitled to be specifically enforced.

[fol. 55] We have the arbitrator's award. It does apply and it did apply to this situation. It will apply to situations in the future and we think that we are entitled to get an order from the Court which would say, "Yes, this is the arbitrator's award," and require the union to comply with it because otherwise we will be in the exact same situation as we are this morning where after three days in port, the

ships after having amassed damages in excess of \$15,000 finally have to capitulate to the economic pressure and pay the men notwithstanding the fact that the award was in their favor, that is, the employer's favor, not in favor of the union men.

This is the issue before the Court. It is not a factual issue at the present time, Your Honor, and one of the reasons why it is not a factual issue is because the factual issues as far as whether or not there was notice, whether or not there has been a particular grievance, should be brought up under the grievance procedure which is in the contract. The law is clear on this as well, that if you have a grievance, you bring it up under the grievance procedure, that if you have a question of damages, you bring it up under the grievance procedure.

There is an action in the courts at the present time with regard to 1291 which relates to this very issue dealing with damages.

The issue that we are here before today on is a legal issue, whether or not the employer with an arbitration award in his favor is entitled to get an order of this Court specifically enforcing the order itself, and we believe that the law backs us up on this case.

Mr. Weiner: If Your Honor please, what Mr. Deasey is clearly asking for—and I don't want to argue the merits [fol. 56] of the case with him—is injunctive relief, the same type of injunctive relief that Sinclair Refining Company asked for in the Sinclair v. Atkinson case where the Supreme Court says, "We cannot grant an injunction in disputes arising out of labor problems; we are prohibited from doing it by the Norris-LaGuardia Act," and I think that Your Honor is prohibited from granting an injunction at Mr. Deasey's request just as the Supreme Court found they were prohibited from doing, and I think that this legal issue as to whether or not the Court has jurisdiction should be thoroughly brief and argued before Your Honor. It is no longer any emergency. The ships are working.

Before Your Honor indicated maybe I was giving double talk; I wasn't. The union has never stated and it is not the union's position today that we will not live up to this arbitrator's award, even though we don't like it, but we want both sides to live up to the contract. It is not a question only of the union living up to it. Both sides should live up to it. We are willing to live up to it. The men are back at work.

We would like an opportunity to brief the jurisdictional question and have that decided by Your Honor, and if Your Honor agrees with us that the Court has no jurisdiction, that will be the end of the matter, and there wouldn't be any need for taking factual testimony.

The Court: Anything else?

Mr. Deasey: Your Honor, we would request permission to put on the evidence which we believe indicates that the union has taken a position which is adverse to the arbitrator's award and show to Your Honor the dire necessity that we feel is present here in order to get specific performance as distinguished from injunctive relief, I think as anyone could readily distinguish, so that we don't have this thing happening tomorrow morning.

[fol. 57] The Court: I think, counsel, Mr. Weiner, has admitted in his statement to the Court the facts that you are about to prove, that these men did not report, and then, finally they did report this morning and they are

working.

Mr. Weiner: The men reported every morning. The men reported to work Friday morning at 8:00 o'clock.

Mr. Deasey: They didn't go to work.

Mr. Weiner: No. They were ready to go to work, but they were told at 8:00 o'clock, "There is going to be a set back." The contract says they have to be told at 7:30. That's what the dispute is about. If they had told these men, if they had notified—

The Court: You agree with that?

Mr. Deasey: We disagree with the facts, Your Honor.

The Court: I will tell you what we will do is this: We will permit you to put the facts on record. The Court will take jurisdiction but it will not render any order, any specific form of order as of this date; because the men are back, but we can put the facts on record, we can discontinue the case, and if something happens, we will just bring the Court up to date. That's all we will do today.

Mr. Deasey: We will have leave at that point, Your

Honor, to come and get the Court's-

The Court: Yes, indeed, and likewise the defendants.

Mr. Weiner: We would like Your Honor at least to have us brief the jurisdictional point to see whether or not the Court has jurisdiction. You are not precluding that, are you?

[fol. 58] The Court: No.

Mr. Weiner: You are not deciding today you have jurisdiction, are you?

The Court: I am deciding I have jurisdiction, and if you show me something I don't have when you come in next time, that's it. I am not going to grant the order that is prayed for by the plaintiff. I am just telling you now I have jurisdiction, I will hear them, and I am not granting the order of specific performance.

Mr. Weiner: May we have a specific time, both sides, within which to present briefs to Your Honor on the juris-

diction thing, sir?

The Court: Yes, indeed. I am so busy, you will have plenty of time.

We will hear this testimony because you have your witnesses here.

Mr. Deasey: Yes, Your Honor.

The Court: And this afternoon if the defendant wants to produce anything, I have several hearings scheduled this afternoon—short or long, I don't know—but if you don't want to do it this afternoon, it will be all right. We will do it whenever the time arises.

Mr. Weiner: All right.

Direct examination.

By Mr. Deasey:

Q. Mr. Scanlan, will you identify your relationship with.

the Philadelphia Marine Trade Association.

A. Yes, I am a member of the bar of this court and I am also a member of the law firm of Kelly, Deasey and Scanlan and, as such, we are counsel for the plaintiff in this case, the Philadelphia Marine Trade Association.

Q. Mr. Scanlan, are you familiar with the details of the grievance and arbitration procedure which resulted in

the arbitration award of June 11, 1965?

A. Yes, I am.

Q. Will you relate to his Honor the details leading up to the arbitration award at that date.

A. Yes, I will.

[fol. 60] Mr. Adler: May I object, Your Honor? The arbitrator's award speaks for itself and the circumstances leading up to the arbitrator's award are immaterial and irrelevant. As I understand the issues of this case-

The Court: Overruled, Proceed.

By Mr. Deasey:

Q. Proceed, Mr. Scanlan.

A. After the the contract that was signed by the parties on February 11, 1965, specifically provided for set back rights by the employers.

Q. What do you mean by "setback rights," Mr. Scanlan?

A. It means that the gangs of longshoremen who are hired the day before can be set back to a later date, namely, at 1:00 o'clock in the afternoon instead of an 8:00 o'clock [fol. 61] start. It provided that where that occurred the

men would receive one hour's pay in the morning and four hours' pay in the afternoon. The contract did not provide for any qualifications whatsoever with regard to the

employer's exercising those rights.

However, on April 26 a dispute arose in which the employers invoked the setback rights which are contained in Paragraph 10(6) of the contract between the parties. The union took the position that the employer could not set back the gangs except for the non-arrival of a vessel in port.

. Mr. Adler: May it please the Court, may I have a continuing objection?

The Court: Yes, sir.

Mr. Adler: To counsel's setting forth the union's position.

The Court: Yes, sir.

Mr. Adler: I think-that's hearsay.

The Court: Yes, sir.

By Mr. Deasey:

Q. Were you there and present and heard the union voice its objections, Mr. Scanlan?

A. Yes, I was present on the afternoon of April 26 when this issue came before both parties, and as a result the parties could not agree under the contract which provides for a grievance hearing initially and then binding arbitration, and as the result, on April 26 the matter was then referred to the impartial arbitrator, Milton Weiss, and Mr. Weiss then conducted the arbitration hearings, and as a result of those hearings he issued his award. [fol. 62] And the first thing that Mr. Weiss did on the first day of the hearing was to ask counsel for either side whether or not his award would be final and binding, and I as counsel for the Philadelphia Marine Trade Association said that it would be, and Mr. Freedman, who represented the defendant in this case, Local 1291, agreed that the award would be final and binding on both parties.

In the course of the hearing each side was asked to set forth what the issue was, and we set forth—I set forth on behalf of my client—that the issue was whether or not there were any qualifications attached to the employer's right to set back men under Section 10(6) of the contract. The union set forth its position by Mr. Askew who read a long statement, which is a matter of record, in which they set forth their position that the employer could only set back men for the non-arrival of a vessel in port.

That issue was framed in the arbitrator's award and, as I recall, I think it appears on page 6 of the award which

is Exhibit C, I believe, in this complaint.

The Court: What page?

The Witness: Page 6, Your Honor.

By Mr. Deasey:

Q. What does it say, Mr. Scanlan?

A. It says, "Issue involved: Whether the provisions in the memorandum of settlement referred to above, that is, Section 10, subparagraphs (5) and (6), are to be considered together so that the employer's right to set back a gang from 8:00 a.m. to 1:00 p.m. is conditioned solely upon the non-arrival of a vessel in port, or is the emfol. 63] ployer's right under Section 10, subparagraph (6) to set back a gang without qualification?"

That was the issue which was framed before the arbitrator, and after Mr. Weiss conducted hearings on a number of days, he issued his award on June 11, 1965, and at the end of his award, which is on page 18 of the award,

he stated as follows:

"The contention of the employer, the Philadelphia Marine Trade Association, is hereby sustained, and it is the Arbitrator's determinated that Section 10(6) of the memorandum of settlement dated February 11, 1965 providing gangs 'ordered for an 8:00 a.m. start Monday through Friday can be set back at 7:30 a.m. on the day of work to commence at 1:00 p.m. at which time a four-

hour guarantee shall apply, a one-hour guarantee shall apply for the morning period unless employed during the morning period' may be invoked by the employer without qualification.

"The contention of the union, the International Longshoremen's Association, Local No. 1291, that Section 10(6) of the memorandum of settlement dated February 11, 1965 referred to above can be invoked by the employer because of non-arrival of a vessel in port is denied."

The Court: You left out one word.

The Witness: Did I, Your Honor?

[fol. 64] The Court: "Can only."

The Witness: "Can only"—"Can only be invoked by the employer because of non-arrival of a vessel in port is denied."

Mr. Deasey: Would you mark this as Plaintiff's Exhibit No. 1 and this as Plaintiff's Exhibit No. 2.

(Notes of testimony of arbitration were marked Exhibit P-1 for identification.)

(Arbitrator's opinion was marked Exhibit P-2 for identification.)

Mr. Adler: In order to save time, Your Honor, we concede that the arbitrator's award attached to the plaintiff's complaint is the arbitrator's award. I don't think that we—

The Court: Having conceded that, there is no point of reading any more from the award.

Mr. Deasey: Right.

The Court: In other words, what I have attached to the complaint, Mr. Adler, is a photostatic copy?

Mr. Adler: Yes.

The Court: And you concede that is a photostatic copy of the original?

Mr. Adler: Yes, Your Honor.

Mr. Deasey: Mr. Adler, would you also stipulate to the effect that there was also an agreement as between the

parties as set forth in the notes of testimony which we have already had identified as Plaintiff's Exhibit No. 1 that this matter would be final and binding? Have you had an opportunity to review it?

[fol. 65] Mr. Adler: I will concede that there were notes

taken at the arbitration-

Mr. Deasey: -hearing.

Mr. Adler: —hearing, and I would prefer my concession not to go any further. There are notes of testimony and I—

The Court: Offer the notes of testimony in evidence.

Mr. Deasey: Beg pardon, sir?

The Court: Offer them in evidence.

OFFER IN EVIDENCE

Mr. Deasey: Your Honor, I would like to offer the notes of testimony which we have had marked Plaintiff's Exhibit No. 1 and specifically pages 3 and 4, Your Honor. I would ask permission to be able to substitute copies of pages 3 and 4.

The Court: Let's see pages 3 and 4, please.

Mr. Deasey: Yes, sir.

(Discussion off the record.)

The Court: Photostatic copies of pages 3 and 4 may be submitted later on for the record.

Mr. Deasey: Thank you, sir.

The Court: Now, what about this?

Mr. Deasey: We will take that back, Your Honor, as long as Mister—

The Court: We don't need this because Mr. Adler has agreed—

Mr. Deasey: That's right.

The Court: —that the photostatic copy in the original complaint is a true and correct copy of the original opinion of Milton M. Weiss, Esq., arbitrator.

[fol. 66] Mr. Deasey: Thank you, sir.

Mr. Adler: Do I understand, Your Honor and Mr. Deasey, you are offering pages 3 and 4 of the record so that the record is not being burdened by the entire transcript?

Mr. Deasey: That's correct, Your Honor, I offer that.

That is all, Mr. Scanlan.

Mr. Adler?

Cross examination.

By Mr. Adler:

Q. Mr. Scanlan, did you stay with the entire arbitration proceeding before Mr. Weiss?

A. Yes, I was present from the very beginning. I attended each of the hearings and I was there until it concluded, the hearings were concluded.

Q. And you are familiar with the award of the arbitrator

on page 18, paragraph 6?

A. I will refer to that, Mr. Adler, if you give me a second.

Yes, as a matter of fact, that is the section of the arbi-

trator's award which I just read into the record.

Q. And in arriving at that award, is it not true that the arbitrator said that he was so ruling because this memorandum of agreement had been arrived at at many sessions and therefore he was going to enforce the language of the memorandum which is clear and unequivocal?

[fol. 67] A. Yes, I think he did say that, but the language as far as the setback was concerned, that there were no qualifications and that was clear and unambiguous. I

believe that's the language that's in the award.

Q. Yes, but that doesn't quite answer my question. If

I may sharpen it, perhaps you will.

When he arrived at that statement, he said prior to that that this was an agreement entered into during extensive negotiations and therefore he was going to enforce all the clear and unequivocal language of that memorandum of agreement—

A. With respect-

Q. -as it was-

Mr. Deasey: Are you referring to any particular page, Mr. Adler?

Mr. Adler: I am referring to pages 17 and 16.

Mr. Deasey: Yes.

A. There is a provision on page 17 of the award in which the arbitrator said, "It is the arbitrator's opinion that this Section 10(6) of the memorandum of settlement dated February 11, 1965 is clear and unequivocal and should not be given meaning other than expressed." That's what he said.

By Mr. Adler:

Q. Yes, and before that, if you will refer back to-

A. I might also add since you brought that up-

Q. —to 16—

Mr. Deasey: Wait a minute.

[fol. 68] A. Excuse me, Mr. Adler. So there is no misunderstanding, he also said that if the arbitrator were to read into Section 10(6) the limitation urged on him by the union, that is, applicable only in case of non-arrival of a cessel in port, he in effect—he would in effect—be writing into the memorandum of settlement something which is not there.

Mr. Deasey: Yes.

By Mr. Adler:

Q. Mr. Scanlan, it was the union's position, was it not, that 10(5) and 10(6) were a unit and therefore the provisions of 10(6) would relate to the qualifications which were set forth in 10(5) and the arbitrator said that the notes of testimony indicate clearly that this agreement was effective—

A. What page are you referring to now, Mr. Adler?

- Q. Let me finish—I am reading 16 and 17—that this agreement was the finalization of the wording and that the language of 10(6) was clear and unequivocal and would be enforced in the manner in which it was expressed. Is that not so?
- A. No, I don't think that's so. I think what the arbitrator said, that on the issue that was involved, whether there were any qualifications attached to 10(6), that was clear and unambiguous, there were no qualifications attached and therefore he had to enforce the language of the contract as it was written.
 - Q. All right.
 - A. But I don't think he said what you just said.
 - Q. May I read the last paragraph on page 17:

"It is the arbitrator's opinion that this Section 10(6) of the memorandum of settlement dated February 11, 1965 [fol. 69] is clear and unequivocal and should not be given meaning other than expressed."

He did say that, did he not?

- A. Yes, that's exactly what he said.
- Q. All right. Just say yes or no.
- A. Yes, he did.
- Q. And because the language of 10(6) was clear and unequivocal, if he were to read anything else into it, he would be in effect writing what he read into it into the memorandum of settlement?

Mr. Deasey; Your Honor, I object to that question.

By Mr. Adler:

Q. Is that not so?

Mr. Deasey: Your Honor, I object to that line of questioning. As a matter of fact, I permitted this to go on. I think that as far as the arbitrator's award is concerned, and as far as his opinion is concerned, they speak for themselves.

Now, what Mr. Adler is doing is trying to raise some speculation through questioning of Mr. Scanlan as to what he might have done under other circumstances, and I believe that that is—

The Court: Objection sustained. The opinion speaks for itself.

Mr. Adler: In order to bring out these points, Your Honor, may I just ask a few more questions?

By Mr. Adler:

Q. The arbitrator did say—as a preliminary question—
"The arbitrator has carefully reviewed the testimony as well as exhibits relating"—

[fol. 70] A. Mr. Adler, will you tell me to what page you are referring?

The Court: I have sustained the objection.

Mr. Deasey: Yes, sir. I repeat the objection, Your Honor.

The Court: What you are talking about will be a matter of argument later on, Mr. Adler. I am not precluding you from discussing the arbitrator's opinion but it is not a question of evidence now.

By Mr. Adler:

- Q. Well, Mr. Scanlan, you were present during the drawing up of the memorandum of agreement, weren't you?
 - A. Yes, I was.
- Q. All right. And you were present during the arbitration proceedings, were you not?
 - A. Yes, I was.
- Q. And you took the position that the language of 10(6) was clear and unequivocal in all respects, did you not?

Mr. Deasey: Your Honor, I rise to object again unless Mr. Adler is going to direct his questions to another facet of this case. If he is going to the opinion itself, the opinion once again speaks for itself, regardless of what Mr. Scanlan—

The Court: I don't know what the drive is or the thrust is.

Mr. Deasey: Beg your pardon, sir?

The Court: I don't know what the drive is or the thrust is. Only Mr. Adler knows. Maybe he doesn't know. I don't know.

[fol. 71] Mr. Adler: I do know, Your Honor, if Your Honor would ask, but this is cross-examination and I think it is a fair question.

The Court: I don't know whether it is fair or not, but so far as I am concerned, the opinion speaks for itself. If it concerns the opinion that's that. If it concerns the notes of testimony, you only offered part, put them in the record.

Mr. Adler: Mr. Scanlan testified as to the position of the parties at the arbitration and at the drawing up of the memorandum of agreement. I am just trying to ascertain whether he takes or does not take the position that 10(6) is clear and unequivocal. I think that's a fairly simple question.

This is not the arbitrator's agreement. I am talking about 10(6) which is the clause under which we are—

The Court: That is an interpretation of a legal document, if you want—

Mr. Adler: I will ask-

Mr. Deasey: If you want to answer-

The Witness: I will be happy to answer that question. The Court: If you want to answer, it is all right with no.

The Witness: We took the position in the arbitration hearing that the question that was involved, there were no qualifications attached to 10(6), was clear and unambiguous, but as far as the issue that was raised, if you are talking about Mr. Weiner's statement today that there had to be notice to the men by 7:30, that was not an issue before the arbitrator and that is not part of Section 10(6), if you are addressing your remarks to that issue.

[fol. 72] By Mr. Adler:

- Q. That is not?
- A. That is not.
- Q. That is not part of 10(6)?
- A. That is right.
- Q. You mean there is-

A. Section 10(6) does not say how the men are to be notified. It merely says that the gangs shall be set back by 7:30.

The question of notification was another matter which came up after the contract was executed and there the parties agreed as to how the notification should take place, but that was not a matter in the arbitrator's award. It is not referred to in the award and, as a matter of fact, the contract itself relating to the setback does not say how the men are to be notified.

Q. Then you say that the language of 10(6) as to the manner of notification is not clear and unequivocal?

Mr. Deasey: I object, Your Honor. He didn't say that. The Court: Sustained.

By Mr. Adler:

Q. Do I understand, Mr. Scanlan, that there is some controversy as to how the men are to be notified?

A. No, there isn't any controversy, because the parties have invoked the notification many times since the Joint Dispatching Office was inaugurated. The cancellation clause in 10(5) relates to the same manner of cancellation by 7:30 [fol. 73] A.M. 10(6) relates to set back by 7:30 A.M., and before this arbitration award, and after the arbitration award, the employers cancelled and set back and notified the Joint Dispatching Office in accordance with the mutual agreement between the parties after the contract was executed.

That is the manner in which the notification was done before the arbitrator's award and it is the way in which it was done after the arbitrator's award. Q. What mutual agreement, Mr. Scanlan?

A. There was a meeting between PMTA and the union after the contract was drawn up to work out the mechanics of the day before hire.

Q. Was this reduced to writing and signed by the parties

to this?

A. It was not reduced to writing. It was a meeting which Mr. Corry can testify to. He was present at the meeting and, as Mr. Weiner stated, this whole procedure of the day before hire was something very novel for this waterfront. It was not possible to incorporate into the contract all the details of the mechanics, and after the agreement was executed the parties had several meetings to work out the mechanics of the inauguration of the day before hire, and I know one of the mechanics that was worked out was the question of notification for cancellation and for setbacks in accordance with the contract, and this was arrived at at one of those meetings.

Mr. Corry was present and so were members of the union

and he can testify to that.

Q. But this was not argued in any of the hearings that led to this arbitration award?

[fol. 74] A. That issue which Mr. Weiner is raising which is a factual issue which we are prepared to testify with other witnesses was not involved in the arbitration.

Q. That was not involved?

A. Was not involved in the arbitrator's award.

Q. The arbitrator didn't pass on it?

A. He was never asked to pass on it so he couldn't pass on it.

Q. Just answer-

A. It was never-

Q. He did not pass on it; is that right, Mr. Scanlan?

A. It was never brought to his attention by the parties.

Q. He did not pass on it?

A. I think I have answered that.

Q. All right. There is a factual question in this case, is there not, Mr. Scanlan, as to how or when the men were notified; is there not?

A. Not to my understanding, but Mr. Weiner says there is. We don't think there is.

Q. All right, but this question is not covered in the arbitration award at all, is it?

A. That is correct.

Q. All right. And it is the arbitration award of the controversy of April which you have set forth as an exhibit in this complaint that you are seeking equitable relief to enforce; is that right?

[fol. 75] A. That is not right. Our equitable relief is based on the union's assertion that they would not be bound by the arbitrator's award because in spite of the award it still only applies as far as the union was concerned to the non-arrival of a vessel in port, and that was the only reason the employer could set back men. This question of notification is something that was raised by Mr. Weiner.

Q. Mr. Scanlan, you heard Mr. Weiner say at the bar of the court and recorded by the reporter that the union considered itself bound within the perimeter of the arbitrator's report?

Mr. Deasey: As a matter of fact, Your Honor, I don't believe that Mr. Weiner said that they were bound within the perimeter of the award. As a matter of fact, if this is in issue, I would suggest that we go back and see the court reporter's record, because now we are getting out into the gray areas of what the union is bound by.

I object to the question because I think the question is

misleading.

Mr. Adler: We are bound by the arbitrator's award, to the award which he has set forth. He has said that the language of 10(6)—he has defined 10(6) as being clear and unequivocal and it should be enforced in the wording clearly expressed. It speaks for itself. To the extent that it speaks for itself we are so bound.

Mr. Deasey: Your Honor, I don't know whether it is appropriate at this point, but whether we could enter into a stipulation which the Court could accept as a basis of an order, and I am not trying to be smart here, but if the [fol. 76] union is going to take the position now that we are bound by this arbitrator's award, and if the attorney himself representing the union wants to go on record to that effect, and the Court takes judicial cognizance of it, we can terminate this.

Mr. Adler: We are bound, Mr. Weiner made that clear. This Court as Mr. Weiner made clear is I think eminently without jurisdiction because it is clear now that they are trying to enforce an arbitration award that doesn't even apply to this case and they are seeking equitable relief.

The Court: That isn't it at all.

Mr. Deasey: No.

The Court: The only thing that is clear to me that you said—Mr. Weiner said—you are bound by this arbitration award. Now, then,—

Mr. Adler: For whatever that award speaks.

The Court: For whatever that award speaks, so it seems to me all your questions here are just questions; they are not getting anywhere.

Mr. Adler: No, I think my questions, Your Honor-

The Court: Questions, merely stating if it goes beyond the arbitrator's award, the union is not bound. I agree with that. Mr. Deasey agrees with that. Everybody agrees with that.

Mr. Deasey: Yes. I don't agree with that.

Mr. Adler: Mr. Scanlar has admitted on the stand that this situation goes beyond the arbitrator's award.

Mr. Deasey: No, just a moment.

[fol. 77] Mr. Adler: Wait a minute. Let me be heard.

Mr. Deasey: You can be heard.

The Witness: I have not.

The Court: Now, 1, 2, 3, 4 of us talking at the same time.

Mr. Adler: May I make my point, Your Honor?

The Court: I think you have made it, but you make it again.

Mr. Adler: Thank you.

Mr. Deasey has admitted in the questions that I have put to him that—

Mr. Deasey: No.

Ma Adler: Well, the record will speak for itself—it is not clear and unequivocal.

The Court: Are you soing to review this whole case?

Mr. Adler: No.

The Court: What are you trying to tell me?

Mr. Adler: I am saying that on the basis of Mr. Scanlan's testimony as of right now this matter should be dismissed.

The Court: No, I told you that's refused. I have said I will hear the testimony. I will take jurisdiction of the case. In view of the fact that the men are back at work it is moot at the moment. If the situation continues as is, the case just stays on the books; that's all.

I gave a right to either party to bring the matter up.

Mr. Adler: I presume Your Honor has given us an exception on the question of jurisdiction and I presume—
[fol. 78] The Court: Of course.

Mr. Adler: —I assume Your Honor has given an exception on the point of mootness, and I am raising a third point, Your Honor, and if Your Honor will hear me out, Mr. Scanlan by his own testimony has admitted that there is an issue here that never came up before the arbitrator.

The Court: All right. That's true. There are thousands

of issues that never came up before him probably.

Mr. Adler: Well, if this present controversy is an issue that never came up before the arbitrator—

Mr. Deasey: He hasn't said.

The Witness: No, I haven't said.

The Court: No, he hasn't said, and that's what you said.

The Witness: That's right.

The Court: You have added words to his mouth, my dear boy, and that you can't do. That might work some place else.

Mr. Adler: If I may be heard, Judge Body.

The Court: You may be heard, but let's stick to the

point, not some other point.

Mr. Adler: He has said there is an issue in this case as to when the men are supposed to be notified. This is an issue that never came up before the arbitrator.

The Court: No, he didn't.

[fol. 79] Mr. Adler: Well, now, let me-

The Court: Well, now, look, what else is there to be said on something else?

Mr. Deasey: Your Honor, I would just like to put one more witness on the stand and ask him one question.

Mr. Adler: Wait. I have a few more questions, if I may.
Mr. Deasey: I am sorry. I thought you meant you were
completed.

By Mr. Adler:

Q. Mr. Scanlan, when the men did not work on Friday, what did you do if anything or what did Mr. Deasey do? A. Well, now, are you talking about legally?

Q. No, just what did you do L

Mr. Deasey: With reference to what, Mr. Adler?

By Mr. Adler:

Q. What steps, what actions, what type of activity did you then engage in?

A. I was-

Q. It is obvious on Monday you filed a lawsuit. Now,

what did you do between Friday and Monday?

A. Mr. Adler, if you were asking me what I did between Friday and Monday, I can tell you. On Friday I wasn't even in my office. I happened to be on vacation when this dispute arose.

Q. Then you didn't do anything on Friday?

[fol. 80] A. So far as this dispute was concerned, I didn't do anything on Friday.

Q. Now, when you returned on Monday—did you return from vacation on Monday?

A. Yes, that's right.

Q. All right. Now, what did you do at that point, if anything?

A. Well-

Q. Prior to filing the lawsuit.

A. Naturally I conferred with my partner, Mr. Deasey, regarding this matter. We discussed it over the weekend. We were very much concerned that a ship had been knocked off and was not working, that there were rumors of this spreading to the entire waterfront on Saturday when we conferred about it.

We understood that there were gangs that were going down on the waterfront that were trying to get men off other ships over this issue and knocking other ships off. We conferred over that issue and we decided that we had to file this complaint to get this relief because this was seriously hurting the entire port.

Q. That's right.

A. And on Monday we took our complaint and we filed it and we came into Judge Body with the complaint, being yesterday, Monday, and today we are here in court in accordance with the Court's hearing that was set yesterday. I think that summarizes what I did.

Q. All right. Then as I understand it, the filing of this complaint was the only action that you took other than conferring with your principals?

[fol. 81] A. Well, I don't know if that's the only action that I took relating to this.

ALFRED CORRY, SWOTH.

Direct examination.

By Mr. Deasey:

Q. Mr. Corry, you are the executive director of the Philadelphia Marine Trade Association?

A. I am.

Q. And you were involved in this recent dispute regarding the setback provision of the contract?

· A. Yes, sir.

[fol. 82] Q. Mr. Corry, did you speak with any members of the officers, any officers of Local 1291, with regard to the contract and specifically with regard to the provision of 10(6) of the contract and the arbitrator's award?

A. I did.

Q. With whom did you speak, Mr. Corry?

A. I spoke with Mr. Askew, Mr. Johnson and Mr. Devine.

The Court: The first name? The Witness: Mr. Askew. The Court: A-s-k-e-w? The Witness: A-s-k-e-w.

By Mr. Deasey:

Q. And when did you speak with them?

A. Late Friday morning.

Q. And who is Mr. Askew?

A. President of Local 1291.

Q. Who is Mr. Devine?

A. Mr. Devine and Mr. Johnson are both business agents for Local 1291.

Q. Mr. Corry, what did Mr. Askew or Mr. Devine or Mister—who was the third one, Johnson?

A. Johnson.

Q. —tell you with regard—what did they say to you—

with regard to the arbitrator's award?

[fol. 83] A. I first talked with Mr. Askew on the phone through a private line that we have with the Central Dispatching Office. It does not have any extensions, and when I talked with Mr. Askew, he had first said he had no knowledge of it, that he wasn't fully aware of it, that he wasn't involved, that it was the business agents, and I said to him that we are invoking the arbitrator's award, and Mr. Askew said I would have to talk to the business agents and that they were not going to—the arbitrator's award only applied to non-arrival of a ship.

So I said, "The arbitrator's award applies without qualification," and he says, "It does not," and they were not

going to live by it.

With that he insisted that I talk with the business agents and, as I said, not having any other extensions, I have another phone number down there, and I immediately called back, and Mr. Askew got on the phone, Mr. Johnson and Mr. Devine-and Paul Johnson did most of the talking at that time-and Paul Johnson said that they were not going to abide by the arbitrator's decision on the setback, and Mr. Devine as much as said, "Yes, that's right," and that was the extent of my conversation with them.

Mr. Deasey: That's all, Your Honor.

The Court: When was this?

The Witness: On Friday morning, sir, late Friday morning.

By Mr. Deasey:

Q. July 30, 1965?

A. July 30.

[fol. 84] The Court: Cross-examination.

Cross examination.

By Mr. Adler:

Q. Mr. Corry, isn't it true that the tenor of their conversation was that the arbitration award did not apply to this case?

A. No, sir, they very definitely stated that they were not going to abide by the arbitrator's award with regard to the setback, and they further stated that the setback only applied for a non-arrival of a ship.

Q. Mr. Corry, let me rephrase the question: Didn't they say that they weren't going to abide by the arbitrator's

award in this case?

A. They did not, sir.

Q. All right. They were talking about this case, weren't they? You were talking about this case?

A. I was talking about this case, certainly.

Q. And you were referring to a current work stoppage, weren't you?

A. I was.

Q. And that's what you were interested in?

A. I was.

Q. And when you spoke to them and mentioned the arbitrator's award you were relating the arbitrator's award to this current work stoppage?

A. That is so, but their reply to me was-

Q. Wait a minute.

A. Well, I want to qualify—
[fol. 85] Q. Just answer yes or no.

Mr. Deasey: Wait a minute.

A. I want to make my answer very clear.

Mr. Adler: May it please the Court-

Mr. Deasey: Just a moment.

Mr. Adler: —counsel had a full opportunity. I am entitled to my pattern of cross-examination.

The Court: Yes, but you are not entitled to cut off the witness.

Mr. Deasey: That's right.

The Court: You may answer the question.

The Witness: I was referring to this case, but at no time did the union say that this—that we are only speaking—that the arbitration award does not apply—only applies—or does not apply, rather, to this particular case.

By Mr. Adler:

· Q. But you were talking about this particular case, weren't you?

A. Certainly. That's the only—that's the work stoppage that we had.

Q. Yes, and when you talked about the arbitrator's award, you were relating it to this case?

A. Yes.

Q. And when they were talking to you they were talking about this case; that is what was involved?

[fol. 86] Mr. Deasey: Objection, Your Honor. The witness has already testified as to what the testimony was from the union officials to himself. I believe he is entitled to state that and I don't believe there is a right here to mislead him.

The Court: This is cross-examination. You may proceed.

By Mr. Adler:

Q. As a matter of fact, there were two ships involved in this dispute; isn't that right?

A. There were two ships that were not working.

. Q. That's right?

A. That's right.

Q. One of them had nothing to do with this arbitration award?

A. To the best of my knowledge, I didn't know what the dispute was, if there was any other dispute on the other ship other than the fact that there were ten gangs that were not working and because they would not abide by the setback-by the arbitration award.

Q. And you were talking about these two ships that were

not working?

The Court: When you use the words "not working," sir, you mean they were not being unloaded?

The Witness: That's right, sir, loaded or unloaded, but I believe they were both discharging ships, if my memory serves me.

The Court: In other words, gangs were not aboard to do whatever work was to be done?

The Witness: Yes, sir.

[fol. 87] By Mr. Adler:

Q. And you were talking about these two ships?

A. That's the only problem that we had at the moment, yes.

Q. Is that right? As a matter of fact, the second ship didn't involve a setback at all, did it?

A. As I was—as far as I was concerned, it was the whole the two ships weren't working because of the union's refusal to abide by the arbitration award on the setback.

Q. Well, isn't it a fact that one of the ships had a problem as to whether 6 and 7 gangs should have been working or 1, 2, 3, 4, and 5 gang should have been working?

A. I don't know anything about that, sir.

Q. You don't know anything about that?

A. No, sir.

Q. Well, the second ship was at the pier, wasn't it, ready to be operated, worked?

Mr. Deasey: Your Honor, I object to this. Mr. Corry has already testified that he doesn't know anything about this other operation.

The Court: Sustained.

By Mr. Adler:

Q. What did you call Mr. Askew about?

A. About the invoking of the arbitration award.

[fol. 88] Q. Well, didn't you call about a ship not working or two ships not working?

A. That ten gangs weren't working.

Q. Well, ten gangs don't work on one ship, do they?

A. Oh, there have been ships when they have. It is possible.

Q. Where there were ten gangs out on one ship?

A. Certainly.

Q. Were there ten gangs out on one ship?

A. Not in this particular case, no.

Q. So that you knew at the time that you were talked to him that one ship involved a setback and the other step did not, didn't you?

Mr. Deasey: Your Honor, I object to that. He has already testified that he doesn't know what the problem was

with regard to the second ship. He has said he knows what the problem was with regord to the first ship I believe was the—

[fol. 89] By Mr. Adler:

- Q. Mr. Corry, you have said that you didn't know anything about the second dispute at all; is that right?
 - A. I knew of only one dispute.
 - Q. All right.
- A. Ten gangs weren't working and it was because of the union's refusal to abide by the arbitration award, period.
- / Q. All right. Let's take that. You knew that ten gangs weren't working and because the union wasn't abiding by the arbitration award?
 - A. That's right, sir.
- [fol. 90] Q. All right. Now, on what ship were the ten gangs not working?
- A. I didn't say they were working on one ship. All I said, there was ten gangs that were not working.
 - Q. All right. Now, why were the ten gangs not working?
- A. Because they wouldn't abide by the arbitrator's award.
 - Q. Well, what was the dispute?
 - A. The setback.
 - Q. Why weren't the men working?
 - A. The setback.
- Q. All ten gangs were not working because of the set-back?
- A. All I know is that ten gangs weren't working and I know that the setback was being tried—trying to be invoked by the employer and the union refused to abide by it.
 - Q. All right. Now, what ship did it involve?
 - A. The "Skaugran"; I believe it was the "Skaugran."
 - Q. And how many gangs were set back for that vessel?

- A. I don't know how many of the ten gangs. I don't recall whether it was four or five.
 - Q. What information did you have-
 - A. Five or six.
 - Q. What information did you have to call Mr. Askew?
 - A. Mr. Adler, I had this information-
 - Q. Just answer my question.
- [fol. 91] A. I am going to answer your question. I had this information, that gangs were not working because the union refused to abide by the arbitrator's award.
 - Q. Well, who told you that?
- A. Mr. Askew—who told me? The employer. The employer reported it first to me.
 - Q. What employer reported it?
 - A. Naciremá.
 - Q. Who?
 - A. Mr. Lynch,
 - Q. All right. What did Mr. Lynch say to you?
- A. That the union refused to abide by the arbitrator's award.
 - Q. All right.
- A. That they were not abiding—that they would not go for the setback.
- Q. That was the only knowledge you had, so you called Mr. Askew; is that right?
 - A. That's right, sir.
 - Q. All right.

The Court: Can you close your examination in five minutes because the court will close at that time. Otherwise we will have to go on some time later this afternoon.

By Mr. Adler:

Q. Did Mr. Lynch tell you what ship was involved and how many gangs were involved?

[fol. 92] A. He told me there were two ships involved, the "Skaugran" and the "Nego Victoria," I believe.

Q. And did he tell you the setback was involved on both

ships?

A. All I knew, there was a setback involved. He said a setback on the "Skaugran" was involved and I assumed that a setback also went for the "Nego Victoria," but there were ten gangs that were not working.

Q. So therefore when you were told by Mr. Lynch that a setback was involved and the two ships were involved you assumed that it had to do with the arbitrator's award;

is that right?

A. I didn't assume that: I knew that because I was told that.

Q. You mean Mr. Lynch told you that?

A. Mr. Lynch told me and it was confirmed by the union.

Q. That was his opinion?

Mr. Deasey: No.

A. No, it was not his opinion. He was told this by the union.

Mr. Adler: Well, I move to strike that, Your Honor. That's hearsay.

Mr. Deasey: You asked him.

The Court: That's right. Let's go on.

By Mr. Adler:

Q. You only knew what Mr. Dynch told you; is that right?

Mr. Deasey: Objection, Your Honor.

The Court: No objection. There is no jury here.

[fol. 93] He only knew because Mr. Adler went over what
Mr. Lynch told him. Now he has got it.

By Mr. Adler:

Q. All right. You then called Mr. Askew? A. Correct. Q. And you told him and discussed the arbitrator's award with him without knowing any of the actual facts of the case; is that correct?

Mr. Deasey: Objection.
The Court: Overruled.

A. I did know that the ship was knocked off because of the refusal of the union to invoke the arbitration award, arbitrator's award. I knew that. The agent reported to me the ship was knocked off; the stevedore reported to me the ship was knocked off. Now, what did you want me to do, go up there myself and see for myself whether or not the ship was knocked off?

By Mr. Adler:

Q. Mr. Corry, didn't you just say that the only thing you knew about the incident was that ten gangs were not working on two ships and that you were told it was arising out of the arbitrator's award?

A. I said that I knew there were ten gangs involved and I further said that I was advised by the operator of the ship that the reason for the ten gangs not working was because of the refusal of the union to abide by the arbitrator's award on the setback.

Q. All right.

[fol. 94] A. That is what I said.

Q. But you didn't know any of the actual facts or circumstances under which the men were not working, did you?

A. I just stated that I didn't.

Q. Other than the fact that they weren't working?

A. I just stated that I didn't.

Mr. Deasey: Objection, Your Honor.

The Court: Overruled. The record is complete on the basis of his knowledge. He has told us the basis of his knowledge.

By Mr. Adler:

Q. And when you called Mr. Askew and you spoke to Mr. Johnson and Mr. Devine, you spoke to them based upon this limited knowledge which you had; is that correct?

A. It was not limited knowledge because it was confirmed

by the union officials that the ships were not working.

Mr. Adler: I have no further questions.

The Court: Anything else?

Mr. Deasey: No further question, Your Honor, and we have no further evidence to present.

The Court: Now, anything else from your side today?

Mr. Deasey: Not from our side.

[fol. 95] The Court: Mr. Adler, do you want to present anything today? If you do, you can come back this afternoon at the end of my other hearings. When they are going to end, I don't know. Maybe they will end at 2:15; maybe they will end at 2:30. I don't know what the situation is.

Mr. Adler: I would like to take advantage of Your Honor's kindness in saying we could come back on another day. I am leaving on vacation on Thursday. I would also like leave at this time to file a written motion to dismiss which has to be-

Mr. Deasey: That has been admitted.

Mr. Adler: No, no, this is after the end of the plaintiff's testimony, if I could have leave to file that this afternoon.

The Court: You may file it. It will be refused.

Do you want to present any testimony this afternoon? Mr. Adler: If I may, I would like to review and have. an opportunity to present testimony on another day in view of the lack of emergency, if I may, Your Honor.

The Court: I will keep the matter in hand. I will keep the matter in hand as a judge. If anything arises, I will take jurisdiction, and whatever the situation is, we will handle it at that time.

So if you don't want to present any more testimony today, on either part, we will just continue the hearing; that's all. It will be continued.

Mr. Deasey: That will be fine, Your Honor.

The Court: If Mr. Adler will file a motion to dismiss, it will be refused. What else do you want?

[fol. 96] Mr. Adler: And I understand I have leave-

The Court: To present testimony.

Mr. Adler: —to present testimony.

The Court: If you want to. If you don't want to— Mr. Adler: Then I will notify the Court in writing.

The Court: On that basis, as stated by your partner, Mr. Weiner, the question is moot.

Mr. Adler: Well, the only testimony I would present, Your Honor, would be testimony in contradiction to the

testimony presented by the plaintiff.

Mr. Weiner: If Your Honor please, if I may, I don't intend to get into the testimony phase of it, but you will recall at the beginning we file a motion to dismiss on jurisdictional grounds.

The Court: I refuse that.

Mr. Weiner: May we have leave to file briefs with Your Honor?

The Court: You may do that.

Mr. Weiner: Would Your Honor like to have them in a certain time, ten days, two weeks?

The Court: Any time you want to do it.

Mr. Weiner: All right, sir.

The Court: After you file your brief-

Mr. Deasey: We will have an opportunity to reply? [fol. 97] The Court: Any time, if you want to do it, any time, ten days. If you are going on vacation—

Mr. Adler: I think it should be done in ten days.

The Court: All right.

Mr. Adler: Jurisdiction—

The Court: I will give you ten days, and ten days thereafter to file your reply.

Mr. Weiner: On jurisdiction.

Mr. Deasey: Thank you, Your Honor.

(Adjourned at 12:30 p.m.)

[fol. 98]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA Civil Action No. 38647

[Title omitted]

Philadelphia, Pa.

Hearing of September 13, 1965

Before Hon, Ralph C. Body, J.

PRESENT:

Kelly, Deasey and Scanlan, by Francis A. Scanlan, Esq., for plaintiff.

Freedman, Borowsky and Lorry, by Abraham E. Freedman, Esq., for defendant.

The Court: As the result of a telephone call from Mr. Scanlan in regard to case of 38647, Philadelphia Marine Trade Association vs. International Longshoremen's Association, Local 1291, we are here to hear whatever is to go on this afternoon.

[fol. 99] It was my recollection that at the testimony of the last time, I said that I would keep the case in my hands and continue it and hold the matter in my jurisdiction, and with that I think we closed the case.

Now, I understand from Mr. Scanlan some other facts have arisen which were not in existence at the last time we came in because the men that had not been to work had returned to work at the time you came back for the final hearing. I understand other facts have arisen, so, Mr. Scanlan, we will give you the oar.

STATEMENT BY MR. SCANLAN ON BEHALF OF PLAINTIFF

Mr. Scanlan: Very good, Your Honor.

May it please the Court, as Your Honor has stated, when we were before you in this matter before, I believe it was on August 3, Your Honor kept the case open so that we could report to Your Honor if any situations developed similar to those which we had before you at that time.

As Your Honor will recall, we were before you last time in connection with an arbitrator's award which was handed down which specifically provided that the employers, members of the Philadelphia Marine Trade Association, had the right to set back gangs without qualification, the issue that was before the Arbitrator at that time.

The Union took the position that the contract only referred to setting back gangs for the non-arrival of a vessel

in port.

This matter was argued fully before the Arbitrator in which it was agreed that the award would be final and binding, and the award provides that the gangs can be set

back without qualifications.

[fol. 100] Now, this morning, Your Honor, I was informed that there were four employers of the Philadelphia Marine Trade Association who had exercised their rights under the contract and the Arbitrator's award to set back gangs for a 1:00 o'clock start this afternoon. These employers were Murphy Cook & Company, which had three gangs and had set them back for a 1:00 o'clock start, Luckenbach Steamship Company which had set back six gangs, Independent Pier Company, which had set back two gangs, and Northern Metals Company which had set back four gangs.

These gangs were set back in accordance with the contract and the Arbitrator's award and, as Your Honor will recall from the last hearing, there is a central hiring point now which we did not have before in which the orders are given to the dispatchers at the central hiring point and the foreman, of course, is notified. Now, the Union has representatives at the central hiring point the same as the employers and Your Honor will recall at the last hearing there was testimony that the president of the local involved, Local 1291, took the position that he was not going to abide by the Arbitrator's award and that as far as he was concerned, the setback rights still applied only to the non-arrival of vessels in port.

Now, this morning when these gangs were set back, Mr. Askew as I understand it took the microphone which is

at the central dispatching office and notified-

The Court: Who is Mr. Askew?

Mr. Scanlan: Mr. Askew is the president of Local 1291, of the International Longshoremen's Association, the defendant in this action.

[fol. 101] And, as I was mentioning, Your Honor, Mr. Askew took the microphone and announced that the men who were set back were not to report at 1:00 o'clock but they were to report tomorrow morning, and in addition to the when who were set back, I understand that there were gangs that were actually cancelled as the employers have a right to do, cancel outright for the day, and Mr. Askew announced that those gangs should report for work at 1:00 o'clock.

Now, this created a real serious problem because there were four vessels involved and we called Your Honor to bring this to Your Honor in accordance with our under-

standing.

I can state to Your Honor that I have been advised at the present time that at 1:00 o'clock today the gangs for Luckenbach reported for work and also the gangs for Murphy Cook & Company. There was one gang that reported for Independent Pier Company that was complete, another gang that was not complete, and they were attempting to fill out that gang. With respect to the Northern Metals Company where there were four gangs that were set back I have been advised that only half of the men showed up and they refused to work this afternoon unless they were paid four hours for this morning which, of course, they are not entitled to under the setback rights.

Your Honor, even if all the gangs for all of the employers had reported for work at 1:00 o'clock we would still want to continue with this hearing to have an order handed down to make it perfectly clear to the defendant that it is required to comply with the Arbitrator's award because we cannot operate in this port if we are going to be continually harassed by the Union in taking the position that they are not going to abide by an Arbitrator's award, and we cannot [fol. 101a] continue to live under a situation where from one day to another we do not know whether a similar announcement will be made telling the men not to report for work.

In this case, fortunately, most of the men have returned to work, but we still have one company, a transit ship, which should be working at 1:00 o'clock, which isn't because of the position which was taken by the defendant, and therefore we want to present our testimony so that after Your Honor has heard it you will have an opportunity to hand down an order which we prayed for originally specifically enforcing the Arbitrator's award in this case.

The Court: Are you ready to proceed?

Mr. Scanlan: Yes, I am ready to proceed, Your Honor.

The Court: Mr. Freedman.

STATEMENT BY MR. FREEDMAN ON BEHALF OF DEFENDANT

Mr. Freedman: May it please the Court, I first want to object to the hearing—

The Court: At the last hearing of this matter Mr. Joseph Weiner of Mr. Freedman's firm appeared and that is Mr. Abraham Freedman?

Mr. Freedman: Yes, sir. Thank you, Your Honor.

I first want to object to the holding of this hearing because I think that there is a complete lack of due process involved to start with.

I received a telephone call about, oh, quarter to one, possibly, between 12:30 and quarter to 1:00, as closely as I can recall, from Mr. Scanlan who just simply said to me that there was a dispute on the waterfront that involved the same issue that was involved in the matter pending before the previous arbitrator and that they had attempted to set

.

back and he said a couple more things along those lines, and that he had been in touch with Your Honor, and Your Honor had said that you would see us at 2:00 o'clock. [fol. 102] I was not advised, nor was any suggestion made, that there was going to be a hearing, and I don't see how there could be a hearing on a matter of this sort now because, first of all, I haven't even had time to discuss the matter with my client, the issues have not been crystallized to the point where the rules required them to be crystallized, namely, there has got to be a complaint with allegations which are clear enough so that we can answer and deny or admit as we consider appropriate, and I need. not suggest to Your Honor what the other requirements of due process are; I am sure that Your Honor is well aware of them.

There has been no time, for example, for me to even prepare for this situation. Mr. Scanlan says that he does not come in for an injunction; he is only coming in for specific performance. Under these circumstances, since he is not asking for an injunction, there is all the more reason for this matter to have been done in the regular fashion which is required by the rules, namely, the filing of a complaint

with the right to me to answer.

I understand that Mr. Scanlan somehow is attempting to tie this incident into the previous incident which came before Your Honor, I believe, on the last day of July, if I recall correctly, and I don't believe that it can be done, but assuming that it can, I still would have a right to interview my client, to find out what they knew about it, and I certainly would have a right to know from Mr. Scanlan on paper, as is required by the rules, just what it is that he is alleging now. Particularly, I notice he is not asking for an injunction, so he says. He simply says he wants specific performance.

[fol. 103] Frankly, I think that the label may be different, but the relief is exactly the same. It is identical and I don't care what we call it. The point is what he wants here is injunctive relief, whether it is in the way of specific performance or whether it is in some other fashion with a different kind of a label on it, so that I would like to make it very clear at the outset that I believe that this hearing should not go forward for that reason alone, namely, we want to see just what it is that Mr. Scanlan is alleging, even if he is alleging something in addition, even if this be a contination of some other conduct which he alleges somehow to be in violation of the agreement. We are still entitled to a complaint or a supplemental complaint in which he sets forth these additional matters with the right to answer. We are entitled to be confronted with these matters in the complaint as well as with evidence to be presented in court, and I think that what he wants to do now is present the evidence before he even alleges it in any formal document.

So that I would like to go on record, Your Honor, as objecting to the holding of this hearing in any fashion whatsoever.

No. 2, I would point out to Your Honor that under the very contract which Mr. Scanlan claims here now, there is a requirement—I don't have it in front of me, Your Honor; I didn't even bring the file with me—and, as I said, I talked to my client for just a moment or two without having any opportunity before coming up here to find out what the facts were, but the contract itself requires that wherever there is a dispute, wherever there is a dispute, it has got to be submitted—I think the clause is 28; I am not sure, but I think that's the clause in the agreemment—it has got to be [fol. 104] submitted to grievance and arbitration. Every dispute is a different case all in itself. The adjudication by an arbitrator of any one dispute does not resolve any dispute and is not a precedent for any other dispute.

I may say to Your Honor that the contract itself requires that kind of a construction and, in point of fact, this is the manner in which this contract has been customarily exercised since as far back as I remember, and that's way back.

I may say also, if I may cite a specific illustration to Your Honor of how this contract and how these disputes have

been handled, in the prior case where Father Comey some years back was the arbitrator, he decided one issue four times, that is, the same issue four times. The parties would bring it up each time, the same issue, and the arbitrator at that time decided the issue on the same basis, but each time there was a different arbitration. Each dispute went through the grievance and arbitration machinery and each one was decided. The fifth time it came up the arbitrator upon his last examination of it finally decided that he had been wrong the first four times and reversed himself, so that actually it is quite clear now from past practice and from the agreement itself that whatever issue, whatever they may have done with respect to one particular dispute, the award as to that dispute relates only to that dispute and is not controlling so far as any future dispute is concerned. Any future dispute which arises has got to go through the same channels. The arbitrator may decide that the same conclusion which he reached before should be reached there too, but it is for him to decide, and if either party has any grievance with that, if they feel they can go to court from the arbitrator's decision, then they can go to court thereafter, but not before, and that's the situation we have got

[fol. 105] Mr. Freedman: So that on that ground alone, Your Honor, on the ground that here they did not go through the remedies required by the contract, this Court is completely deprived of jurisdiction, even if it otherwise had jurisdiction, and I submit, as I will argue in a moment, that it did not and it does not, but even if Your Honor did have jurisdiction, you don't until the requirements of the contract have been satisfied, and here they made no pretense, and I think the evidence will show that they made no pretense, of even going through the motions required by Clause 28 or whatever it is, or whatever the number is, which relates to the grievance and arbitration machinery, so that on that ground alone this Court lacks jurisdiction to proceed with this matter.

No. 3, on the pure legal ground, even assuming that there was an arbitration here, that there was a grievance and an arbitration as required by the contract, and that the arbitrator handled it in a proper fashion and rendered a decision in this case, on these facts this Court would be completely powerless to enter an injunction under the circumstances because of the prohibition under the Norris-LaGuardia Act.

[fol. 106] I cite to Your Honor the case of Sinclair vs. Atkinson decided by the Supreme Court of the United States very recently, relatively recently, which I respectfully submit to Your Honor is on all fours with this one.

I know that we have filed briefs with Your Honor in connection with the last matter that came up before you on July 30—I think that was the date—

The Court: The 3rd of August.

Mr. Freedman: The 30th?

The Court: The 3rd of August.

Mr. Freedman: The 3rd of August, yes, and I understand from Your Honor that you considered the matter moot at that time and therefore didn't consider/those briefs but—

The Court: Then men had gone back to work and at the time the briefs came in there was no point in making a decision; the matter was moot.

Mr. Freedman: I would respectfully suggest when Your Honor reads those briefs, reads our brief, but more importantly, reads the decision of the Supreme Court of the United States in the Sinclair case, you will conclude that there is absolutely no jurisdiction in this type of situation. I think that brief is in Your Honor's file and it is laid out for Your Honor there.

Now, Mr. Scanlan makes the point, and he cites a number of other cases, saying that the Court does have jurisdiction and so on, but when Your Honor reads the Sinclair case, you will see that all of these cases that Mr. Scanlan refers to are considered by the Supreme Court of the United States and distinguished.

[fol. 107] For example, in the Steel case and some of the others—there was the Steel trilogy and there were a couple of others—they were the cases where the petitions in the other courts were to go to arbitration. The Supreme Court held in prior cases—the Lincoln Mills case, for example—that you could require a union to go to arbitration, the court could enter an award requiring a union to go to arbitration, but, said the court, in the Sinclair case, that is not to say that you can enter injunctive relief to compel adherence to the award. That's something different because you cannot enter an injunction under the circumstances simply because of the Norris-LaGuardia Act which prohibits injunction wherever there is a labor dispute involved.

Now, I don't know that I need labor that any further, Your Honor. I think that Your Honor should read that case and when Your Honor reads it over I feel confident that you will simply dismiss this complaint in its entirety because there just isn't any jurisdiction.

So these grounds, upon these grounds, I respectfully

submit that you dismiss these proceedings.

I would also suggest since the case upon which this proceeding is premised, namely, the one that was decided, rather, that was held before Your Honor on August 3, and which as Your Honor indicated became moot at that time, I would respectfully request that your Honor, if there is any question about it, make a decision one way or the other so that we could appeal in that decision, in that case, so we would at least have some basis to go to the Court of Appeals.

[fol. 108] The Court: In my opinion, we have jurisdiction and I will continue jurisdiction of this case. However, in view of the absence of your client this afternoon, I will continue the matter until 2:00 o'clock tomorrow afternoon.

Mr. Freedman: Very well, sir.

The Court: Mr. Scanlan, do you have anything else to say? I didn't give you an opportunity to say anything.

Mr. Scanlan: Well, no, Your Honor. I disagree with

some of the things that Mr. Freedman espoused.

The Court: Yes, I assume you did, but I decided for other reasons—so far as entertaining jurisdiction, I disagree with Mr. Freedman on that—but some of the other matters at this time are still to be decided by me, you know. Now, then, whether or not I have a right to issue what you ask is, of course, another matter, but I have jurisdiction to hear the matter. That's all I am determining this afternoon, and then we will have the hearing tomorrow morning, if you choose to amend your original complaint and have it in shape so that Mr. Freedman knows what you are going to say.

Mr. Scanlan: Your Honor, he knows because-

The Court: So if you want to-

Mr. Freedman: I don't know. I don't know.

The Court: You heard him say it this afternoon.

Mr. Freedman: I know, but that's not the way it is required by the Court. I want to know dates, I want to know times, I want to know specifics, sir. He says there [fol: 109] was an attempt to set back. That doesn't make—I want to know who was involved, where it occurred, the name of the vessel and everything else.

The Court: The choice is with you, Mr. Scanlan, what

you choose to do.

Mr. Scanlon: Yes, Your Honor. I say this for you very briefly on the record, we did file our complaint. Mr. Freedman knew what it was all about. The only reason the hearing did not continue was because the men had gone back to work, and it looked as if perhaps this thing might not come up again.

There was an admission of record that the union was bound by the Arbitrator's award.

.The Court: Well, it would appear from what you said that better than 75 per cent of the men went back to work.

Mr. Scanlan: Yes, but what we want, Your Honor, is to have this decided once and for all, and we don't believe that frankly—I don't believe—it is necessary to file another complaint. Mr. Freedman knows what we are seeking.

The Court: Maybe you want to file another complaint in view of what is involved today. That's entirely up to you. If Mr. Freedman's point is good your case would fall on that alone. It would seem to me his point on that may be good, off the record—not, "off the record"; on the record—it would seem to be good because you now have circumstances of September 13 concerning four different companies, and I assume therefore four different vessels, is that right, four different ships?

[fol. 110] Mr. Scanlan: Yes, there were four stevedoring companies.

The Court: In other words, four different stevedoring firms, and the stevedoring firms have three gangs in one and two in another and one in another and so forth so—

Mr. Scanlan: Your Honor, as far as that is concerned, I did state what the basis was, and I have no objection at all to amending the complaint to add these specific—

The Court: I think it should be done. I think it would be helpful to the Court.

Mr. Scanlan: Yes, I would be happy to do that so there won't be any objection by Mr. Freedman on that.

The Court: Well, he makes an objection anyway, but

maybe the objection wouldn't have mattered.

Mr. Freedman: Your Honor, I am not going to just object, and I never have. I don't object captiously and I don't object without good reason. If he is going to file an amended complaint, I have a right to answer. The rules give me certain rights as to when and how to answer. Since he himself says this is not an injunction and there is no suggestion here for the specific kind of relief which goes along with injunction cases, then the regular requirements of the rules should be adhered to.

Mr. Scanlan: Well, now, Your Honor, I disagree with that and that's one reason why initially I stated I saw no reason to file an amended complaint because we do want to proceed with this hearing tomorrow afternoon.

[fol. 111] I gave Mr. Freedman the outline of what we

intend to prove.

The Court: Well, now, secondly, gentlemen, I must tell-you that there is no guarantee I can go on at 2:00 o'clock because the argument list comes first, but if the argument list folds like it has a number of times, we have a number of situations where parties did not file briefs, and if the other side moves for a judgment or whatever the matter is, it shall be entered and it may well end up with two or three arguments.

Mr. Scanlan: One other point I would like to make, Your Honor, and this is very important, and the fact that it is an action for specific performance doesn't in any way mitigate from the importance and the need to have the order entered.

The Court: Well, the way I view this situation, Mr. Scanlan, is anything and everything that comes before the

trial court is a matter of importance.

Mr. Freedman: I would say this: At least I find myself in agreement on one ground with Mr. Scanlan. I think it is not only important; I think it is terribly important, not only the substance but the procedure which is involved here, everything that we are dealing with here. We are dealing with human rights as well as property rights and each has got its place and each must be respected.

The Court: Gentlemen, we will continue the matter until tomorrow at 2:00. There is no guarantee that you are

going to be heard at 2:00, but be ready.

Mr. Freedman: If it looks as though we won't get reached or Your Honor won't have time for us, may we expect a call from Your Honor so that we can possibly do some other chores? [fol. 112] The Court: Do something else? Well, about 12:00 o'clock we will know better about 2:00 o'clock. I have no idea what the situation is because we won't know until the list is called at 10:00 and then we won't know because what we do, we will list them in the order in which they appear, and sometimes counsel get out in the hallway and settle the case before the case comes up, you know that, time and again.

Mr. Freedman: That's right.

May I make one other request, Your Honor? Since I have indicated the Sinclair case is so precisely on point and so important and so dispositive, may I request that Your Honor read that case thoroughly overnight? Thank you, sir.

The Court: Bedtime story. .

Mr. Freedman: Very good, sir. The Court: All right, gentlemen.

Mr. Scanlan: All right, thank you very much, Your Honor.

(Concluded at 3:15 P. M.)

[fol. 113]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 38647

[Title omitted]

Hearing of September 15, 1965

Philadelphia, Pa.

Before Hon. Ralph C. Body, J.

PRESENT:

Kelly, Deasey and Scanlan by Francis A. Scanlan, Esq., for plaintiff.

Freedman, Borowsky and Lorry by Abraham E. Freedman, Esq., for defendant.

[fol. 114] The Court: Gentlemen.

Mr. Scanlan: Mr. Corry.

Mr. Freedman: If the Court please, may I protect my record at the outset? I would object to any testimony or any proceedings of any nature whatsoever at this point because there is nothing before Your Honor. There is no pleading, there is no amended complaint nor any new complaint. I don't think an amended complaint would do it, but there is nothing before Your Honor, and I respectfully suggest that Your Honor not only doesn't have any jurisdiction now, but there is nothing that Your Honor could hear now, and in fairness to my client I think I should be apprised in formal fashion as the rules require just what it is that Mr. Scanlan is alleging so that I could answer and come into court properly prepared, sir.

The Court: Mr. Scanlan.

Mr. Scanlan: If Your Honor please, there is a complaint before the Court. The complaint was filed in conjunction with the matter in which we originally invoked the Court's jurisdiction. We have not changed our cause of action. We are still seeking an order enforcing the Arbitrator's award.

Mr. Freedman was served with a copy of the complaint. He knows what the allegations of that complaint are, and under the Federal Rules, he is not entitled to allegations of all the facts. The complaint merely has to set forth a cause of action, and the complaint which Mr. Freedman has certainly as far as we are concerned sets forth our cause of action.

As far as the subsequent events are concerned, this is a continued hearing which Your Honor continued specially in the event there were incidents which occurred after the [fol. 115] last hearing on August 3, and these are the incidents which we are now bringing to Your Honor's attention so that Your Honor can rule on our prayer which is in our complaint which is an order for specific performance.

Mr. Freedman at the last hearing asked for an amended complaint. An amended complaint would not be proper in this case because there are no facts which we left out of our original complaint, and an amended complaint would only be for the purpose of amending, for facts that had occurred prior to the time of the filing of the complaint. This is not the situation here. We are before Your Honor in accordance with the agreement at the last hearing, that if there were subsequent events which occurred, that we should bring it to Your Honor's attention so Your Honor could rule on the prayer in our complaint.

So I say to Your Honor there is a complaint and we are now before Your Honor with the subsequent events which I outlined on the record and which were actually disclosed to Mr. Freedman in chambers before we appeared in the courtroom, and he knows what these events

are, and I don't think Mr. Freedman is entitled to any more than that at this time. *

Mr. Freedman: I want to reiterate my objection, Your Honor. I don't know what the events are.

Mr. Scanlan talks about certain subsequent events and incidents, and I am going to object to anything which is not pleaded. Certainly there is no complaint in this case, Your Honor. This is an entirely brand new dispute. Whatever might have gone before is one thing, but even if it were, even if the other complaint should conceivably be applicable here, it should be amended. I am not saying [fol. 116] what it should be. I didn't ask for an amended complaint before. It was suggested to Mr. Scanlan that he amend his complaint. I think Your Honor suggested it to him, not me.

I say that if he has got a new cause of action, or if he has got any cause of action here based on these incidents about which he wants to have testimony now, he should put it in the form of a pleading which is required by the rules.

I therefore think that anything that he wants to have testimony about now concerning any new incidents, any new events, certainly is not relevant and not admissible in this proceeding. I say that there is no basis for this proceeding without any new pleading.

Mr. Scanlan: Your Honor, just very briefly in reply— The Court: We will proceed. I understand the situation. We will proceed.

Mr. Scanlan: Very good, Your Honor.

Mr. Corry.

Mr. Freedman: Did I understand Your Honor overruled my objections, sir?

The Court: The objection is overruled. We will proceed with the hearing.

ALFRED CORRY, SWOTH.

[fol. 117] Direct examination.

By Mr. Scanlan:

Q. Mr. Corry, you have previously testified in this action, have you not?

A. Yes, I have.

Mr. Freedman: I object, Your Honor, when he says, "in this action." This is a brand new action. I am going to object, sir.

The Court: You have noted that general objection. You have a general exception on those lines.

Mr. Freedman: Thank you; sir.

By Mr. Scanlan:

Q. Now, Mr. Corry, will you please advise His Honor as to what happened on September 13, 1965 with respect to gangs which were set back by members of the PMTA?

A. On Monday morning-

Mr. Freedman: Objection, Your Honor, not pleaded, nothing before the Court on it, sir.

The Court: Overruled.

A. On Monday morning, between 8:30 A.M. and 8:45 A.M.-

Mr. Freedman: What date is this, now, sir? What date was that?

The Witness: Beg-on Monday morning, September 13.

Mr. Freedman: September what?

[fol. 118] The Witness: 13th-between the hours of 8:30 A.M. and 8:45 A.M., Mr. Monroe of Murphy-Cook Company arrived into my office and advised me that he set back gangs-

.Mr. Freedman: I am going to object, Your Honor; hearsay.

The Court: Are you going to insist on that?

Mr. Freedman: Sir?

The Court: On all the rules of evidence before me? Mr. Freedman: I didn't quite grasp what you said.

The Court: Are you going to insist on all the rules of evidence before me, we have to bring in all these matters?

Mr. Freedman: Absolutely. I am not going to waive anything. I don't think I am being technical.

The Court: You are being very technical. Just face the facts.

Mr. Freedman: I am doing what I think the interests of justice requires. I think if I would do nothing I wouldn't be serving my client.

The Court: Overruled.

By Mr. Scanlan:

Q. Please continue, Mr. Corry.

The Court: Will you please sit down, Mr. Freedman. Mr. Freedman: Yes, sir. I find a little difficulty hearing him unless he keeps his voice up.

[fol. 119] A. Between the hours of 8:30 A.M. and 8:40 A.M., Mr. Monroe of Murphy-Cook Company came into my office and advised me that gangs that he had ordered on Saturday for an 8:00 A.M. start on Monday morning were set back to 1:00 P.M. on Monday.

He further advised me that Mr. Askew, the President of Local 1291, made an announcement over the loudspeaker system that is in the central dispatching office to the effect that all gangs who were set back to 1:00 P.M. were not to report at 1:00 P.M. but were to report at 8:00 A.M. on Tuesday.

While Mr. Monroe was in my office I picked up a direct line that we have to the central dispatching office and I spoke with Mr. Evans, our chief dispatcher. I inquired of Mr. Evans of what—I advised him of what I was told and asked him if he knew anything about it. Mr. Evans

confirmed that this was so, and not only did this apply to Murphy-Cook, but there were three other companies

involved, namely-

Mr. Freedman: If the Court please, my objection goes to this entire line and I assume it covers everything that the witness is saying, sir.

The Court: That's hearsay.

A. Namely, in addition to Murphy-Cook Company, there was Nacirema Operating-not Nacirema; I am sorry-Northern Metals Company, Independent Pier Company and Luckenbach Steamship Company. I then-

By Mr. Scanlan:

Q. Now, sir-

A. —called—

[fol. 120] Q. I beg your pardon.

A. Yes.

Q. Are you finished?

A. You want me to continue on as to what happened?

Q. Well, yes. May I just interrupt at this point, Mr. Corry—

Mr. Freedman: I think the witness ought to be permitted to finish his answer to the question before he is interrupted, sir, if it is going to be relevant. I don't think that counsel ought to interrupt him. I think we are entitled to have his full answer,

Mr. Scanlan: Your Honor, I have no objections if Mr.

Corry would like to continue.

By Mr. Scanlan:

Q. Please continue, Mr. Corry.

A. All right, sir.

Mr. Freedman: Subject to my objection, of course.

A. I then picked up the phone and I called Local 1291's office and spoke with Mr. Askew, and I asked Mr. Askew if he had made such an announcement over the loudspeaking system that the gangs ordered for 8:00 A.M. and were set back for 1:00 P.M. were not to report until Tuesday morning. Mr. Askew confirmed that he made such a statement.

By Mr. Scanlan:

Q. Now, Mr. Corry, you identified Mr. Monroe of Murphy-Cook & Company. Is Murphy-Cook & Company a member of the plaintiff, PMTA?

[fol. 121] A. Yes, sir, they are.

Q. Now, how many gangs had they set back on Monday, September 13?

A. Three gangs, I believe.

Q. And do you know how many gangs were set back by the other companies which you have mentioned?

A. Yes, I believe Independent Pier set back two gangs; Luckenbach set back six gangs—

Mr. Freedman: Luckenbach, how many?

The Witness: Six gangs.

Mr. Freedman: Six?
The Witness: Yes, and Northern Me

The Witness: Yes, and Northern Metals, I believe it was four gangs.

Mr. Freedman: Four?

The Witness: Four gangs, yes, sir.

The Court: Who was the first two gangs?

The Witness: Independent Pier, sir.

The Court: Northern Metals was the last one you mentioned?

The Witness: Yes, sir.

The Court: That would be two, six and four, twelve gangs all together?

The Witness: And three gangs from Murphy-Cook.

The Court: Three gangs, Murphy-Cook?

The Witness: Yes.

[fol. 122] Mr. Scanlan: That's all I have, Your Honor. Cross-examine.

Mr. Freedman: If the Court please, I am not going to cross-examine this witness because I consider that if I do it may be participating in a hearing and reflecting some dignity to testimony which I do not believe is relevant, and therefore I am going to refrain from cross-examination, sir.

The Court: That choice is with you, sir.

Mr. Freedman: Sir?

The Court: You will have to make that choice.

Mr. Freedman: Sir?

The Court: If that's your choice, all right.

Mr. Freedman: That's my choice with this witness, sir.

Mr. Scanlan: That's all, Mr. Corry.

.Mr. Scanlan: Mr. Evans.

JOSEPH J. EVANS, SWOTN.

Direct examination.

By Mr. Scanlan:

Q. Now, Mr. Evans, by whom are you-

Mr. Freedman: I have the same objection to this witness, too, Your Honor.

[fol. 123] The Court: You have an objection to this witness?

Mr. Freedman: Yes, Your Honor.

The Court: Make it.

Mr. Freedman: I object to this witness also for the reason that it is not indicated that he is going to testify to anything that was involved in the original proceeding, and I don't believe there is anything before Your Honor now that he can testify about.

The Court: Overruled.

Mr. Freedman: I would ask for an offer of proof although I think Mr. Scanlan has made it clear, sir, what

he wants, and I assume that this is what he is going to prove or attempt to prove with this witness.

The Court: Proceed.

Mr. Freedman: Howould seem to me if he is going to prove, he proved what happened subsequent to the events set out in the last complaint.

The Court: Proceed, Mr. Scanlan.

By Mr. Scanlan:

Q. Mr. Evans, by whom are you employed?

A. By the Philadelphia Marine Trade Association.

Q. And what is your position with the Philadelphia Marine Trade Association?

A. I am the chief dispatcher at the Joint Dispatch Committee Center.

[fol. 124] Q. Where is that dispatching center located?

A. Beneath the Walt Whitman Bridge.

Q. Now, Mr. Evans, were you present at the dispatching center on Monday, September 13?

A. Yes, I was.

Q. What time did you arrive there?

A. At approximately 6:45.

Mr. Freedman: Would you keep your voice up, please? The Witness: At approximately 6:45.

The Court: Will you pull your chair forward a bit and talk in the general direction of Mr. Freedman.

By Mr. Scanlan:

Q. Now, Mr. Evans, did you see Mr. Askew at the central dispatching office that morning?

A. Yes, I did.

Q. What time did you first see him?

A. At aproximately 7:40.

Q. Now, while you were there did you hear Mr. Askew make any announcement on the public address system?

A. Yes, sir, I did.

Q. Will you please tell His Honor what you heard Mr. Askew say.

[fol. 125] A. Mr. Askew announced that the gangs that were set back to 1:00 o'clock on that date were to report the following day at 8:00 A.M. The gangs that were cancelled out that morning were to report at 1:00 o'clock that same day.

Mr. Scanlan: Cross-examine.

Mr. Freedman: First, I would like to move to strike the testimony of this witness as I do the testimony of Mr. Corry, and for the same reason I would not cross-examine this witness.

The Court: Overruled.

No cross.

Mr. Scanlan: That's all, Mr. Evans.

The Court: I would ask the court stenographer to please repeat for me the answer to the last question that Mr. Evans gave, "Mr. Askew said"—

(The answer was read by the reporter.)

Mr. Scanlan: Now, if Your Honor please, that completes our testimony and now we would like Your Honor to con-

sider the prayer of our complaint.

Mr. Askew has announced that the gangs that were set back in accordance with the Arbitrator's award, which is a matter of record in this case—it was appended to our complaint and it was admitted at the time of the last hearing—and under that award the employers have the right to set back their gangs, and the gangs are to report at 1:00 o'clock in accordance with the award, and in accordance with the contract, and this clearly shows, this testimony shows, that Mr. Askew, who is the President of the defendant Local [fol. 126] here, has taken it upon himself to announce that gangs that had been hired and had been set back and were required to report for work at 1:00 o'clock should not report and that they should report the next day, which

is evidence that the defendant Local does not intend to abide by the Arbitrator's award in this case.

The Court: What happened in response to the announce-

ment? We have no testimony in regard to that.

Mr. Scanlan: We don't have any, Your Honor. I don't

consider it necessary.

I don't mind advising Your Honor as a matter of record that three of the companies who had set back their gangs, these gangs actually reported contrary to Mr. Askew's instructions. The other company, the gangs—not all the gangs reported; half of the gangs reported—and as I understand it, Your Honor, they were unable to fill out the gangs that were involved that afternoon, so that is the situation as a matter of record, but I don't consider it important enough at this time to present it as a matter of testimony.

Mr. Freedman: I object to Mr. Scanlan's statement. I don't believe that he is in a position to give estimony. I don't believe he should, and I move that his statements be stricken from the record. I don't think it is an answer and

I don't think it is proper evidence..

The Court: I don't think it is proper evidence, either. I think we should have some evidence as to what happened as a result of that, Mr. Scanlan.

Mr. Scanlan: Very good, Your Honor. Then I shall recall Mr. Corry.

Mr. Corry.

[fol. 127] ALFRED CORRY, recalled.

Direct examination (continued).

By Mr. Scanlan:

Q. Mr. Corry, with respect to the-

The Court: You have been sworn, Mr. Corry, it is not necessary for you to be sworn again.

The Witness: Thank you, sir.

By Mr. Scanlan:

Q. Mr. Corry, will you please explain to His Honor what happened on the afternoon of September 13 with respect to the companies that you have mentioned whose gangs were set back?

A. Between 1:00 P.M. and 1:15 P.M.—and I am not saying that this is the chronological order that they called in—but that I talked to representative—to a representative of Independent Pier, Murphy-Cook, Luckenbach and Northern Metals Company respectively, maybe not necessarily in that order, and three of the companies, Independent Pier, Murphy-Cook and Luckenbach, had reported that their gangs had showed up and was—and checked in to go to work. Northern Metals Company reported that only half of the men had showed up and they didn't have enough men to go to work and the men that did show up had made a claim that they weren't going to go to work unless they were paid four hours for the morning period. However, the gang—the men that did show up left the premises and that ship laid idle that afternoon.

[fol. 128] Q. Now, Mr. Corry-

Mr. Freedman: When you say, "showed up," are you talking about that same day, September 13?

The Witness: That's right, sir.

Mr. Freedman: All right.

The Court: Well, I didn't quite understand that. Mr. Freedman has asked a question now and I am still more confused.

Mr. Freedman: Sir?

The Court: Your question still more confuses me. I didn't understand Mr. Corry's answer.

On the last ship, on Northern Metals?

The Witness: Yes, half the gangs showed up; half of the men showed up.

The Court: Half the men showed up?

The Witness: And the other half didn't show at all.

The Court: I see.

The Witness: Did not show at all, I believe, unless I misunderstood Mr. Freedman.

The Court: Mr. Freedman asked the question. I understand—

Mr. Freedman: I just wanted to know whether it was on the same day.

The Court: Same particular day.

Mr. Freedman: Same day, September 13.

[fol. 129] The Witness: That's right.

The Court: I was just confused.

Mr. Freedman: I wasn't interrogating; I simply wanted to make clear that his testimony was directed to that date.

Mr. Scanlan: I think the record should show, however, that Mr. Freedman did propound the question to the witness.

· The Court: Well, the record shows what it shows.

Mr. Freedman: It will show what it shows.

You can make the most of it, Mr. Scanlan.

By Mr. Scanlan:

Q. Now, Mr. Corry-

Mr. Freedman: And I will, too.

By Mr. Scanlan:

Q.—while you were there in addition to the statements that Mr. Askew made to you when you called him and he said he had made the announcement on the public address system, did he say anything to you with respect to the Arbitrator's award?

A. He said—he further stated—

Mr. Freedman: The same objection as before, Your Honor.

The Court: Overruled.

A. He further stated that the setback only applied to non-arrival of a ship and he wanted to re-arbitrate.

[fol. 130] The Court: Wait a minute, I didn't hear that. "He further stated"—

The Witness: He further stated that the setback applied only to the non-arrival of a ship and further that he wanted to re-arbitrate, and I wasn't going to discuss any re-arbitration with him or anything. I just wanted to confirm the fact that he made this statement, that he confirmed to me that he did, where he advised the men not to report at 1:00 o'clock in the afternoon but gave instructions to report at 8:00 A.M. on Tuesday morning.

Mr. Scanlan: Cross-examine.

Mr. Freedman: I take the same position, Your Honor; I have no questions.

The Court: No questions. You may step down. That's all, Mr. Corry.

Anything else, Mr. Scanlan?

Mr. Scanlan: No, sir, I don't have any further testimony, Your Honor.

The Court: Mr. Corry— The Witness: Yes, sir.

The Court: Did you state—you don't have to come up; just stay where you are—when the conversation, the second conversation, took place with Mr. Askew?

[fol. 131] The Witness: No, this was all during the first conversation, sir.

The Court: One conversation?

The Witness: I only had one conversation with Mr. Askew.

The Court: You had one conversation in the morning?

The Witness: Yes, sir. The Court: All right.

Anything else, gentlemen?
Is that all your testimony?

Mr. Scanlan: Yes, sir, that completes our testimony, Your Honor.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Mr. Freedman?

Mr. Freedman: I don't intend to offer anything, Your Honor. I don't think there is anything before the Court, sir.

The Court: What does the petitioner ask?

Mr. Scanlan: Your Honor, we ask that you enter an order requiring the defendant Local to comply with the Arbitrator's award.

The award is now a matter of record and it clearly—when Your Honor has an opportunity to examine, you will see that it clearly—provides that the employer here has a right to set back the gangs without qualification and the men must report for work at 1:00 o'clock, and when they do, they are paid four hours in the afternoon and one hour in the morning.

Now, this is an extremely important matter to the welfare of the entire waterfront, Your Honor, because the Union has taken the position, and there was testimony on this at the prior hearing, that Mr. Askew said he did not intend to [fol. 132] be bound by the Arbitrator's award, and I would like to call to Your Honor's attention that the plaintiff organization here is being subjected to harassment in that at the time of the hearing when we were before Your Honor, we did not proceed any further on the ground that the ship was at work and there were statements made of record that the union—by counsel for the union—that the union was bound by the Arbitrator's award in this case and that—

The Court: That is my recollection.

Mr. Scanlan: Yes, Your Honor, and as far as that is concerned—

The Court: What page is it?

Mr. Scanlan: Yes, sir, I would like to refer to the pages. On page 5, if I might cite that to Your Honor, Mr. Weiner, who represented the defendant Local said:

"We, that is, the union, makes no bones about the fact that they are unhappy with the Arbitrator's award, but we realize that we are stuck with it." I would also like to cite to Your Honor the statement that is made on page 9 of the notes of testimony by Mr. Weiner when he stated:

" • • • And the arbitrator decided contrary to the union's position that this setback—"

The Court: Where do you find that?

Mr. Scanlan: At the bottom of the page on page 9, Your Honor:

"** And the arbitrator decided contrary to the union's position that this setback could be invoked for any reason, not only for non-arrival of a vessel or for inclement weather. [fol. 133] It had been the union's position—it still is—although it is most now—that the setback could only be for specific reasons, either for non-arrival of a vessel, for inclement weather, or for compelling reasons like that which was not within the control of the employer."

In addition, on page 13, Mr. Weiner stated:

"And we have never taken the position. We have taken the position that although we don't like this award, we are going to follow it, but we are also going to insist that the employer follow the award and follow the contract to the letter."

In addition, on page 19, Mr. Weiner stated, towards the bottom of the page, Your Honor:

"Before Your Honor indicated maybe I was giving double-talk; I wasn't. The union has never stated and it is not the union's position today that we will not live up to this Arbitrator's award, even though we don't like it, but we want both sides to live up to the contract. It is not a question only of the union living up to it: Both sides should live up to it. We are willing to live up to it. The men are back at work."

In addition, on page 42, at the bottom of the page, Mr. Adler stated:

"We are bound by the Arbitrator's award, to the award which he has set forth. He has said that the language of 10(6)—he has defined 10(6) as being clear and unequivocal and it should be enforced in the wording clearly expressed. It speaks for itself. To the extent that it speaks for itself we are so bound."

[fol. 134] In addition, on page 43, Mr. Adler also stated towards the middle of the page:

"We are bound, Mr. Weiner made that clear."

Referring to the Arbitrator's award, and I might point out to Your Honor that at the bottom of the page, where the reference is to the language of 10(6), that that is the language that is involved in this matter before you, this setback clause which is 10(6), and at the bottom of the page on 43, Mr. Adler says—well, I think I would have to read what Your Honor said:

"The only thing that is clear to me that you said—Mr. Weiner said, you are bound by this arbitration award. Now, then—"

And then Mr. Adler says:

"For whatever that award speaks."

Now, Your Honor, these are statements that were made at the last hearing which clearly indicate counsel for the defendant union stated to the Court that the union was bound by the Arbitrator's award as far as that award was concerned, and now we find that Mr. Askew is taking the position that the union is not bound by the award and is instructing men not to report in accordance with the award, and this matter, Your Honor, cannot continue. We cannot be under the harassment of waiting each day to find out if Mr. Askew is going to make a similar announcement, and we will not know whether the men will report or whether they will not report.

[fol. 135] The Arbitrator's award, it was agreed at the time of the arbitration—and this is a matter of record

at the former hearing where the notes of testimony were introduced, which I believe are Plaintiff's Exhibit No. 1—that the Arbitrator's award would be final and binding, and this award must be final and binding as far as the award is concerned, and if the defendant union is going to take the position which it has according to our testimony, which I might say, Your Honor, is not contradicted because there is no contradictory testimony that has been offered in this case, therefore, the position at this point is that the union has taken that position that it will not be bound by the award, and I say to Your Honor that we would request Your Honor very promptly to enter an order enforcing the award in accordance with its terms.

The Court: Mr. Freedman. Mr. Freedman: Yes, sir.

I may say, Your Honor, that Mr. Scanlan did in the course of his quotations from the testimony omit something very serious and very relevant which qualified what he was saying. I want to say first, however-I will point that out-but I want to say first, however, whatever statements these gentlemen made, who are my partners, they made pursuant to an opinion which I had myself rendered and on the basis of which even Mr. Askew took the position. He didn't take it on his own; he took it after legal advice, and I rendered an opinion, and I am ready to stand behind it, and if there is any culpability, I will take it, and that is that the award of that Arbitrator applied only to that particular set of facts and no other, and I [fol. 136] gave it in my opinion, my carefully considered opinion, that the award of the Arbitrator could not possibly apply to any other set of facts, and that the union was not bound in any other case other than in this particular one by the award of the Arbitrator.

I even pointed out in many instances in a letter which I wrote to the Arbitrator taking exception to his award, a copy of which went to Mr. Scanlan, that this particular

award has many defects, and if it ever comes up for judicial analysis, I think that we could very clearly demonstrate its invalidity.

However, we don't have to go that far in this case or in the preceding one. It is very clear, Your Honor, that pursuant to that opinion of mine that I put in a letter as I said long before the proceedings arose, that I said that the award—and this is a fact, Your Honor, and I can substantiate it with documentary evidence and practice before these parties—that award of the Arbitrator applies only to a specific case and to no other, and whenever a new dispute arises, it has got to go through the regular contract requirements just as every other dispute goes through which requires grievance and which requires arbitration, and that was what Mr. Weiner was talking about when he said they have got to abide by the contract, and by that he meant they have got to go through grievance and arbitration just as they went through the same procedure in the previous case before Mr. Weiss.

Now, what he forgot, he quoted a part of Mr. Adler's testimony on page 43, for example, and this will support what I am saying, and I think that Mr. Adler was simply [fol. 137] following my recommendation, my advice to the union, which I had given to them. On page 43 where Mr. Adler says—and I will read the full paragraph to Your Honor, not as Mr. Scanlan did—and he said:

"We are bound, Mr. Weiner,"-

The Court: Just a moment. I have the wrong page.

Mr. Freedman: 43, sir.

The Court: The bottom of the page?

Mr. Freedman: About two-thirds of the way down where-

The Court: I have it.

Mr. Freedman: Where Mr. Adler says:

"We are bound, Mr. Weiner made that clear. This Court as Mr. Weiner made clear is I think eminently without

jurisdiction because it is clear now that they are trying to enforce an arbitration award that doesn't even apply to this case"—

And then, here is the point that he left out-

"that doesn't even apply to this case and they are seeking equitable relief."

It doesn't apply to this case, and that's the position which we have taken and the union has taken that position on myadvice, as counsel for the union, sir. I have advised them.

Now, I may say to Your Honor that going back through the record—and I am prepared to submit those if the time requires at a proper hearing, and if Your Honor should demand it, regardless of whether it is a regular hearing [fol. 138] or not-I will be glad to produce them, records showing that in prior cases, where a decision was made on a particular issue—for example, let me give you a specific issue-Clause 13(d) of the old contract, for example, which required negotiation with the introduction of any new development in the handling of cargo, when the employers' introduced certain machinery-one was a sugar machine and then there were several other machines and other equipment which was introduced. The union went before the Arbitrator and said, "Clause 13(d) doesn't apply and we think we are entitled to arbitrate this." We wanted to arbitrate the number of men in gangs. The employers voluntarily reduced the number of men in gangs and we wanted to arbitrate the number of men in gangs that would be required to operate the new machinery.

The employers refused and the union took it to arbitration. Father Comey at that time ruled that under Clause 13(d) of the contract it was subject to negotiation and not

arbitration. That was the first time.

Then again the same question came up, precisely the same question. The only thing different was a new machine, and this time the union again went to arbitration,

and Father Comey gain, after arbitration, rendered the same decision. They entertained the arbitration and he rendered the same decision.

Four times this occurred, Your Honor—four, perhaps five. Then, following that, new machinery was introduced down at the sugar house, a whole new set of automation, and they couldn't agree the parties couldn't agree on the number of men in gangs to operate it, whereupon the employers took it to arbitration this time, and this time Father Comey took it and he reversed himself, and he said, "It is only human to err. It is true I previously erred that this [fol. 139] clause of the contract required negotiation and not arbitration. I now rule that it requires arbitration," and he went ahead and he arbitrated it.

All of this points up, Your Honor, the practice and the construction of the agreement. It is the identical clause that we are concerned with here, the identical clause. In every case, wherever there is a dispute, every case has got to stand on its own two feet, and whether it is the same, looks the same as any other case, it has got to go through the regular channels, it has got to go through the contract, and that is what Mr. Weiner was talking about. Let them go through the contract, let them go to arbitration. The Arbitrator is available. He has got to render a decision within 48 hours under the contract itself, so they could have gotten instantaneous relief, much quicker than Your Honor could have given it to them. By the time Your Honor gets the complaint, they prepare the complaint and have a hearing and so on, many days go by as the situation is here. There the contract requires the Arbitrator to give his decision within 48 hours. Now, they could have gotten it within 48 hours, and that's what Mr. Weiner was talking about. That's what Mr. Adler was talking about and he made it unequivocally clear when he said that decision didn't even apply to this case, meaning the case that came before Your Honor before, concerning which they did file a complaint.

Now we have got a brand new case with new ships involved, new parties involved; and I respectfully submit to Your Honor that first of all they have not exhausted the requirements under the contract.

Secondly, what they are really asking, Mr. Scanlan is treading on egg shells here, what he is really asking is for injunctive relief. What does he want Your Honor to [fol. 140] do? He wouldn't come out and say it, but the inference is clear. He wants Your Honor to restrain the union from a work stoppage. Am I wrong about that? That's what he wants Your Honor to do.

So that even if they did go through the contract, even if they did abide by all the provisions, and even if the Arbitrator should-and I don't think he will, but that's something to be determined—that even if he should hold the same decision that the other arbitrator held, Your Honor would then be powerless to give him this relief because the Supreme Court of the United States said that the Norris-LaGuardia Act prevents the enforcement of any award which has the effect of enjoining strikes, work stoppages or picketing of that sort, anything which is within the proscription of the Norris-LaGuardia Act.

The Court: Anything else to say, Mr. Scanlan?

Mr. Scanlan: Yes, sir.

Your Honor, first of all, with respect to Mr. Freedman's statement regarding the Arbitrator's award, I would like to point out to Your Honor that when you get an opportunity to review that award, you will see that the purpose of the award was the interpretation of that contract clause.

The Court: I am familiar with it.

Mr. Scanlan: Yes, and therefore it doesn't make any difference what the facts are. The point that was resolved by the Arbitrator was the interpretation of the contract clause that was in issue, and that interpretation would apply at any subsequent time where the same facts are involved, so that if you had the same facts, there is no [fol. 141] 'necessity to go back and arbitrate because if

that were so, it would make a mockery out of arbitration and there would be no resolution of any industrial disputes.

And also I might point out to Your Honor that if either party were to take the position that once an award has been handed down, which is agreed to be final and binding, that it is not going to be bound by such award because it doesn't like it, that this, too, would make a mockery out of the whole arbitration process. For example, the award that was rendered in this case by Mr. Weiss: I believe that during his term as an arbitrator he rendered six awards, five of which were against the employers, and this was the only award during his term that he rendered in favor of the employer. Now, if the union can take the position that it is not going to be bound by this award because it doesn't like it, then the employers could take the position that they are not going to be bound by previous awards of Mr. Weiss or any of the other arbitrators. and this would certainly create chaos in this industry or in any other industry, for the whole purpose of arbitration is to resolve disputes, and where similar facts are involved subsequently that award applies just like a judg ment of a Court.

So I just point that out, Your Honor.

The Court: What are you seeking in this case?

Mr. Scanlan: With respect to the order that we are seeking, I think Mr. Freedman knows what we are seeking, because it is set forth—

The Court: No, I am asking you.

[fol. 142] Mr. Scanlan: Yes. Your Honor, we are asking for an order—

The Court: Do you have a form of order attached here? Mr. Scanlan: Yes, I have a form of order prepared.

The Court: Let me see it. Show it to Mr. Freedman, or a copy of it, rather.

Anything to say, Mr. Freedman, or have you said all you want to say?

Mr. Freedman: What can I say?

The Court: All right. Anything to say, Mr. Scanlan?

Mr. Scanlan: I beg your pardon?

The Court: Anything to say?

Mr. Scanlan: Before Mr. Freedman says anything, Your Honor, I would like to say one other thing: We are not seeking an injunction. We are not seeking to enjoin work stoppages. It is quite clear what we are seeking is the enforcement of this Arbitrator's award and asking that the defendant be ordered to comply with the said award. That's what we are seeking.

The Court: In the event they do not comply with the

said award-

Mr. Scanlan: That is an event we will have to face, Your Honor. If the order is issued by the Court and the defendant elects not to comply with the Court's order then sub-

sequent proceedings will have to be taken.

Mr. Freedman: Just what does that mean, your Honor, enforcement of the award? All that the Arbitrator did there was to hold that—I think it is Clause 10(6) that he refers to—was without so-called qualifications. Now, he didn't order the men back to work.

[fol. 143] Does this mean that the union cannot challenge this award, cannot challenge any dispute hereafter, cannot raise this question in the future? That's what this would mean. In other words, they are asking Your Honor to foreclose the union from even saying in the future that—we can't even raise this in a proper tribunal, that if we do, we will be in contempt of Court.

The Court: Under the Arbitrator's award, you agreed

the Arbitrator's award would be final.

Mr. Freedman: In that case?

The Court: In that case.

Mr. Freedman: That case is moot. The ship is gone. There is nothing more to be done about it.

The Court: I will sign this order.

Mr. Freedman: Well, what does it mean, Your Honor? The Court: That you will have to determine, what it means.

Mr. Freedman: Well, I am asking. I have to give my client advice and I don't know what it means. I am asking Your Honor to tell me what it means. It doesn't—

The Court: You handled the case. You know about it.

You are arguing it doesn't fit into this case.

Mr. Freedman: I am telling you very frankly now I don't know what this order means, this proposed order. It says, "Enforcement of the award." Now, just what does it mean?

Are we being restrained from a work stoppage?

[fol. 144] I don't want to disobey any of Your Honor's instructions. I have never violated any Court order in my life and I will not permit my client to do it and I don't intend to. I must know, therefore, the limit of Your Honor's ruling. Now, I ask Your Honor, what does it mean?

The Court: The Court has acted. This is the order.

Mr. Freedman: Well, won't Your Honor tell me what it means?

The Court: You read the English language and I do.

Mr. Freedman: I will ask you, but it doesn't say it. I can't understand it. I am telling Your Honor I don't understand it. Now, perhaps Your Honor can explain it to me. Does this mean that the union cannot engage in a strike or refuse to work or picket?

The Court: You know what the arbitration was about.

You know the result of the arbitration.

Mr. Freedman: The arbitration here was under a specific set of facts, involved an interpretation of the contract under a specific set of facts, and he made that interpretation. Now, how do you enforce it? That case is over and done with. These are new cases. Your Honor is changing the contract of the parties when you foreclose them from going to arbitration on this point again.

The Court: I have signed the order. Anything else to

come before us?

Mr. Freedman: I know, but Your Honor is leaving me in the sky. I don't know what to say to my client.

[fol. 145] Mr. Scanlan: No, I have nothing further, Your

Honor.

The Court: The hearing is closed.

Mr. Freedman: Well, I want to object to it. I want to strenuously object, Your Honor.

The Court: Objection noted for Mr. Freedman.

(Concluded at 2:45 P.M.)

[fol. 146]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 38647.

PHILADELPHIA MARINE TRADE Association, a non-profit Delaware corporation, Bourse Building, Philadelphia, Pa., Plaintiff,

VS.

International Longshoremen's Association Local 1291, Pier 4, South Wharves, Philadelphia, Pa., Defendant.

Order—September 15, 1965

And Now to Wit, This 15th day of September, 1965, after hearing, it is hereby ordered, adjudged and decreed that the Arbitrator's Award in the matter of arbitration between the Philadelphia Marine Trade Association and International Longshoremen's Association Local 1291, issued on June 11, 1965, be specifically enforced by defendant, International Longshoremen's Association Local 1291, and the said defendant is hereby ordered to comply with and to abide by the said Award.

By the Court.

Ralph C. Body, J.

[fol. 148]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIBCUIT
NO. 15613

PHILADELPHIA MARINE TRADE ASSOCIATION,

International Longshoremen's Association, Local 1291, Appellant.

Appeal From the United States District Court for the Eastern District of Pennsylvania.

Argued April 14, 1966

Before McLaughlin, Hastie and Freedman, Circuit Judges.

OPINION OF THE COURT—Filed August 11, 1966

By McLaughlin, Circuit Judge.

In this action to enforce an arbitration award under a labor management contract, the trial Court ordered enforcement and the defendant union appeals.

The plaintiff association is a non profit organization comprised of steamship owners, operators, stevedores and the like in the port of Philadelphia. The union is the bargaining agent of the Philadelphia deep sea longshoremen. The bargaining agreement, dated February 11, 1965, applied retroactively from October 1, 1964 and expires Sepfol. 149 tember 30, 1968. On April 26, 1965, there was a dispute between the association and the union over the meaning of Section 10, sub. par. 6 of the agreement. The

[File endorsement omitted]

general caption of Section 10 is "Hiring System". Subparagraph (6) reads:

"(6) Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period unless employed during the morning period."

The matter was correctly referred to an arbitrator, Milton M. Weiss, Esq. There were three hearings, April 30, 1965, May 3, 1965 and May 5, 1965. At the start of the first hearing the Arbitrator stated:

"This hearing that we are conducting today, relating to interpretations of a clause of your new contract, from what I understand, between the parties, it has been agreed that it would be carried on in accordance with the usual procedures of The American Arbitration Association. Being a member of that panel, and having conducted hearings along these lines, I will proceed in the same fashion as we do in those cases."

He then said!

"I think maybe there are a couple of things I would like to say. I think all of us would like, perhaps, to resolve right in the beginning that it is understood between the parties that the determination made by the Arbitrator in this case will be final and binding."

To this Mr. Freedman, counsel for the Union, answered, "That is our understanding. As a matter of fact, that is the understanding of the agreement." Mr. Scanlan, counsel [fol. 150] for the association, answered: "Yes. In accordance with the contract."

A thorough, well reasoned decision was filed by the Arbitrator June 11, 1965. In that opinion the Arbitrator properly stated the "Issue Involved" as follows:

"Whether the provisions in the Memorandum of Settlement referred to above, i.e. Section 10, subparagraphs 5 and 6, are to be considered together so that the Employer's right to set back a gang from 8:00 A.M. to 1:00 P.M. is conditioned solely upon the non-arrival of a vessel in port, or is the Employer's right under Section 10, subparagraph 6 to set back a gang without qualification?"

The Arbitrator ruled:

"It is the Arbitrator's opinion that this Section 10(6) of the Memorandum of Settlement dated February 11. 1965 is clear and unequivocal and should not be given meaning other than expressed. If the Arbitrator were to read into Section 10(6) the limitation urged on him by the Union, i.e. applicable only in case of non-arrival of a vessel in port, he would in effect be writing into the Memorandum of Settlement something which is not there. The Arbitrator has carefully reviewed the testimony as well as exhibits relating to the negotiations between the parties which resulted in their final agreement. It is quite obvious that the document finally agreed upon was the subject of much discussion and negotiation, and both parties had ample opportunity to modify and change these provisions before the final instrument was drawn. A review of the negotiations set forth above relating to Section 10(5) and 10(6) indicates clearly that there was much discussion and negotiation before the final draft which was contained in the Memorandum of Settlement dated February 11, 1965."

[fol. 151] In making his Award, the Arbitrator held:

"The contention of the Employer the Philadelphia Marine Trade Association, is hereby, sustained and it is the Arbitrator's determination that Section 10(6) of the Memorandum of Settlement dated February 11, 1965, providing gangs 'ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM, at which time a 4 hour guarantee shall apply. A 1 hour guarantee shall apply for the morning period unless employed during the morning period,' may be invoked by the Employer without qualification.

"The contention of the Union; the International Longshoremen's Association, Local No. 1291, that Section 10(6) of the Memorandum of Settlement dated February 11, 1965, referred to above, can only be invoked by the Employer because of non-arrival of a

vessel in port, is denied."

On July 30, 1965 the Union refused to acquiesce in Nacirema Operating Company, one of the Association employers, setting back an 8:00 A.M. start of work to 1:00 P.M.

According to the testimony which was not denied, the President of the Union, Mr. Askew, advised the executive director of the Trade Association, Mr. Corry, that "the arbitrator's award only applied to non-arrival of a ship." Told by Mr. Corry that "The arbitrator's award applies without qualification," Mr. Corry testified that Mr. Askew replied, "'It does not' and they were not going to live by it." Mr. Corry stated that Mr. Askew told him he would have to talk to the business agents. Mr. Corry said he did so, to Messrs. Johnson and Devine, that Mr. Johnson did most of the talking "—and Paul Johnson said that they were not going to abide by the arbitrator's decision on the setback, and Mr. Devine as much as said, 'Yes, that's [fol. 152] right,' and that was the extent of my conversation with them."

On August 2, 1965, the Association filed a complaint against the Union in the District Court. This set out the labor agreement between the parties, the Arbitration Award, "that the Union does not agree with the Arbitrator's Award and does not intend to comply with the terms of such award." The complaint went on to allege serious damage to the Employer, the owners and operators of the particular vessel and to the Port of Philadelphia. It stated that "The defendant's refusal to comply with the Arbitrator's Award constitutes a breach of the applicable provisions of the current Collective Bargaining Agreement between P.M.T.A. and the Union." It prayed for an immediate hearing and "an order enforcing the Arbitrator's Award" with ". * * such other and further relief as may be justified." The District Court issued an order to show cause to defendant, "why it has not complied with the Arbitrator's Award of June 11, 1965" and a hearing was set for August 3, 1965, 11 A.M. A motion was filed on behalf of defendant to dismiss the complaint upon the grounds it did not state a cause of action and that the Court was without jurisdiction to grant the relief sought which the motion called "injunctive".

At the hearing counsel for the plaintiff informed the Court that the action was under Section 301 of the Labor Management Relations Act (29 U.S.C. § 185) for enforcement of the Arbitration Award, above quoted, under the bargaining agreement between the parties which the union had refused to abide by in connection with the employer's attempted set back of work on July 30th and that the union's position was that it, "would not abide by the arbitrator's award."

Counsel for the union told the Court "We, that is, the union, makes no bones about the fact that they are unhappy with the arbitrator's award, but we realize that we are stuck with it." He insisted several times more that [fol. 153] the union would live up to the arbitrator's award. After argument on the question of jurisdiction, the Court held it possessed jurisdiction. Contention was made for

A.M. of a set back. Actually, all the award mentioned about 7:30 A.M. was, as seen above, to repeat the language of 10(6) of the employment agreement providing that the gangs "ordered for an 8:00 A.M. start Monday through Friday can be set back at 7:30 A.M. on the day of the work." There is nothing regarding notification to employees by 7:30 A.M. In passing, that would be a physical impossibility where the set back itself did not take place until 7:30 A.M. This particular argument was not urged at the later hearing nor is it alluded to on this appeal.

At the August 3rd hearing the Court was advised by counsel for the plaintiff that because of the economic problem of keeping the ship idle, the objected to additional wages demanded had been paid and that the men had returned to work. The Court made the following statement:

"I will keep the matter in hand. I will keep the matter in hand as a judge. If anything arises, I will take jurisdiction, and whatever the situation is, we will handle it at that time.

"So if you don't want to present any more testimony today, on either part, we will just continue the hearing; that's all. It will be continued."

The question of the construction of the Arbitrator's Award again came before the Court on September 13, 1965. At that time the Court said to counsel on both sides:

"It was my recollection that at the testimony of the last time, I said that I would keep the case in my hands and continue it and hold the matter in my jurisdiction, and with that I think we closed the case.

"Now, I understand from Mr. Scanlan some other facts have arisen which were not in existence at the [fol. 154] last time we came in because the men that had not been to work had returned to work at the time you came back for the final hearing. I understand other

facts have arisen, so, Mr. Scanlan [counsel for plaintiff], we will give you the oar."

On that occasion four employers of the plaintiff had attempted to set back gangs under the Arbitrator's Award and Mr. Askew, President of the Union, ordered the men to follow different procedures. Plaintiff's dilemma, as outlined to the Court, was that an order was needed requiring the Union to comply with the Award "because we cannot operate in this port if we are going to be continually harassed by the Union in taking the position that they are not going to abide by an Arbitrator's Award, and we cannot continue to live under a situation where from one day to another we do not know whether a similar announcement will be made telling the men not to report for work."

For the defense, it was again asserted that the Court had no jurisdiction, with the further argument that the Award only covered the one dispute then active, i.e. "Every dispute is a different case all by itself." At a further hearing on September 15, the subsequent events making the hearing necessary were narrated by witness for the plaintiff, Mr. Corry, the executive secretary of the Association, who testified, of the Union president's order to the men which in effect countermanded the employers' set backs and stopped work on the four ships concerned. Mr. Corry said that in a talk he had had with Mr. Askew, the latter told him that "• the set back only applied to the non-arrival of a ship and he wanted to rearbitrate." Mr. Evans, chief dispatcher for the Association, heard Mr. Askew give his countermanding order and so stated.

There was no testimony on behalf of the Union.

The Court's attention was specifically called to the various statements by counsel for the Union at the previous [fol. 155] hearing to the effect that the Union would obey the Arbitrator's Award, particularly to counsel having said to the Court

"And the arbitrator decided contrary to the union's position that this setback could be invoked for any reason, not only for non-arrival of a vessel or for inclement weather. It had been the union's position—it still is—although it is moot now—that the setback could only be for specific reasons, either for non-arrival of a vessel, for inclement weather, or for compelling reasons like that which was not within the control of the employer."

It was claimed on behalf of the Union that the Arbitrator's decision governed only the single dispute at that time and did not apply to any other subsequent 10(6) problem. The second point presented was a repetition of the question passed upon by the Court at the first hearing i.e. a denial of jurisdiction on the ground that injunctive relief was being sought.

The Court, holding that the Arbitrator's Award was final and binding in its construction of Section 10(6) of the employment agreement, ordered that the Union specifically enforce it and that it comply with and abide by

the said Award.

Appellant argues that this is an injunction proceeding prohibited by the Norris-LaGuardia Act. It relies completely upon Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962). That suit concerned an injunction to end the particular strikes involved and work stoppages on nine occasions over a period of almost two years. It categorically holds pp. 213 and 214:

"The plain fact is that § 301, as passed by Congress, presents no conflict at all with the anti-injunction provisions of the Norris-LaGuardia Act. Obedience to the congressional commands of the Norris-[fol. 156] LaGuardia Act does not directly affect the 'congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes' at all for it does not impair the right of an employer to obtain

an order compelling arbitration of any dispute that may have been made arbitrable by the provisions of an effective collective bargaining agreement."

In that decision the Supreme Court, p. 212, approved of its opinion in Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957) which held pp. 458-459:

"The Congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of Section 7 of the Norris-LaGuardia Act."

In 1960 in the case of Steelworkers v. Enterprise Corp., 363 U.S. 593, the Supreme Court again ruled that the District Courts, as here, have jurisdiction under Section 301 of the Labor Management Act to order compliance with Arbitration Awards. The Fourth Circuit Court of Appeals, 269 F.2d 327 (1959) had modified the judgment of the District Court as the Supreme Court said p. 599 " * * so that the amounts due the employees may be definitely determined by arbitration. In all other respects we think the judgment of the District Court should be affirmed." See also Textile Workers Union v. American Thread Co., 113 F.Supp. 137, 141, 142 (D.Mass. 1953), which was completely approved by the Supreme Court in Lincoln Mills, supra. Local 149 Boot and Shoe Workers v. Faith Shoe Co., 201 F.Supp. 234 (M.D. Pa. 1962) where the Court sustained a § 301 action similar to the one at bar to enforce an Arbitrator's Award. New Orleans S.S. Association v. Longshoremen's Local 1418, 44 CCH Labor Cases 26,602 (E.D. La. 1962) dealt with the same problem with the Court holding:

[fol. 157] "However, the parties to the contract agreed to be bound by the decision of the arbitrator, and the plaintiff is entitled to have the award of the arbitrator enforced."

Under the facts and the law, the holding of the District Court that it had the jurisdiction to enforce the crystal clear judgment of the Arbitrator was sound and right. It was not in conflict with the Norris-LaGuardia Act but completely within the Lincoln Mills and Steelworkers opinions, supra, and a vital part of the all important enforcement of the specific performance of the admittedly agreed to arbitration clause in the labor contract before us.

Appellant also complains that the trial Court did not make findings of fact and conclusions of law and give reasons for the issuance of the order and to clarify the nature of the conduct compelled, allegedly in violation of F.R.C.P.

52(a) and 65(d).

The argument is without merit. Appellant's citations from this Circuit are founded on particulars radically different from those before us and are not comparable. We have already held that this is not an injunction suit. It is squarely under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. It alleges a breach by defendant of its labor contract with plaintiff in that the former refuses to comply with the Arbitrator's Award under said contract to its damage and asks for an order enforcing the Award; for specific performance of the Award. On August 3, 1965 when the matter had first been heard, because the men were back at work then under circumstances as outlined earlier, the Court said, "I will keep the matter in hand as a judge. If anything arises, I will take jurisdiction and whatever the situation is, we will handle it at that time." In accordance with this, on August 13, 1965 the attorney for the plaintiff reported the new situation to the Court, as above related and the Court thereafter held a hearing at plaintiff's request. This was still under the original [fol. 158] order on defendant to show cause why it had not complied with the Arbitrator's Award. The decision disposed of the rule to show cause by ordering compliance with the Award on the part of defendant. Plaintiff urges that in those circumstances Rule 52(a) does not govern since in reality the decision was on plaintiff's motion under

its rule to show cause. Under 52(a), findings of fact and conclusions of law are unnecessary on decisions on motions with the exception of involuntary dismissal motions under Rule 41(b). Plaintiff here makes an impressive point.

And the circumstance that defendant took its appeal the day after the order was and is important. Whether deliberate or not, it precluded the trial Court from entering findings of fact and conclusions of law even if they were

required in this instance.

Above all, in the uncontradictable posture of this appeal the error, if any, of not filing findings of fact and conclusions of law was inconsequential. There was no dispute of fact, and no challenge whatsoever of evidence on behalf of the plaintiff. The sole opposition to plaintiff's proofs was the legal argument that the Court did not possess jurisdiction and that the Arbitration Award did not mean what it said and was not of the scope which had been definitely agreed to on behalf of the Union. Factual issues therefore were not validly before the Court and the record fully discloses the in effect admitted facts on which the order was based. Barron & Holtzoff (Wright Rev.), Vol. 2b § 1126 p. 500. The trial Court, on the legal points before it, merely determined the law from the uncontroverted facts, making the absence of formal findings of fact and conclusions of law excusable. United States v. Prendergast, 241 F.2d 687 (4 Cir. 1956); Rossiter v. Vogel, 148 F.2d 292 (2 Cir. 1945); Hurwitz v. Hurwitz, 136 F.2d 796 (D.C. Cir. 1943).

Rule 65(d) F.R.C.P. deals with "Form and Scope of Injunction or Rertaining Order". In pertinent part it reads:

[fol. 159] "Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; * * * "

The order in question reads:

"And Now to Wit, This 15th day of September, 1965, after hearing, it is hereby ordered, adjudged and decreed that the Arbitrator's Award in the matter of arbitration between the Philadelphia Marine Trade Association and International Longshoremen's Association Local 1291, issued on June 11, 1965, be specifically enforced by defendant, International Longshoremen's Association Local 1291, and the said defendant is hereby ordered to comply with and to abide by the said Award."

As we have indicated this order is not an injunction. Nor can it be reasonably construed as a restraining order. All that it requires is that the defendant affirmatively enforce the Award and comply with and abide by it. It simply calls upon the defendant for specific performance of the Arbitration Award.

Even if it were assumed to be within Rule 65(d), under the facts, the language of the order is fundamentally in accordance with 65(a). Mayflower Industries v. Thor, 182 F.2d 800 (3 Cir. 1950), cert. den. 341 U.S. 903 (1951), relied on by appellant had to do with an injunction issued under Rule 62(c) pending an appeal. Because no grounds were given for its issuance the injunction was dissolved. The case does not touch the special factors of this controversy. In any event if there is error with respect to 65(d), it is minor and in no way decisional.

Appellant's final point is that the action was moot because plaintiff failed to go to arbitration as required by [fol. 160] the contract and because there was no authority to retain jurisdiction. This needs no extended discussion. The August third episode was not ended legally because the employer was forced to pay the extra money demanded under the economic compulsion of being unable to keep its ship idle. The Court continued the case for the time being against the possibility of a like practical condition

arising. The wisdom of so doing developed when an identical type of work disturbance and of more serious proportions broke out on September 13th, was immediately brought before the Court and promptly concluded. The issue was the very same continuing quarrel regarding the governing labor agreement which directly affected the

entire. Port of Philadelphia.

The thought advanced that the litigation was moot because plaintiff refused to go to arbitration is out of line with the facts and the law. As has been seen the Arbitration Award was not to cover just a single wrangle under 10(6). The Award construed 10(6) itself and held generally regarding set backs that which it so plainly sets forth as above quoted. This, as was admitted for the Union, ended all attempted legitimate divergence of opinion regarding them. It was no failure to arbitrate on the part of the Association that necessitated the Court action. It was rather the deliberate decision of the Union to disregard the Award in the hope of in some fashion restricting it to the first incident of August 3rd, 1965.

The record in this appeal is free of any substantial error. The order of the trial Judge directing specific performance of the Arbitrator's Award was called for by the facts and law of the problem involved. It will be

affirmed.

[fol. 161]

IN THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 15,613

PHILADELPHIA MARINE TRADE ASSOCIATION.

VS.

International Longshoremen's Association, Local 1291, Appellant.

(D. C. Civil No. 38647)

On Appeal From the United States District Court for the Eastern District of Pennsylvania.

Present: McLaughlin, Hastie and Freedman, Circuit Judges.

JUDGMENT-August 11, 1966

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the District Court (directing specific performance of the Arbitrator's Award) filed September 15, 1965, be, and the same is hereby affirmed, with costs.

August 11, 1966

[File endorsement omitted]

[fol. 162]

IN THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 15,613

PHILADELPHIA MARINE TRADE ASSOCIATION,

V

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,
Appellant.

Before: Staley, Chief Judge, and McLaughlin, Kalodner, Hastie, Smith, Freedman and Seitz, Circuit Judges.

ORDER—September 22, 1966

The petition for rehearing and consolidation in this case is denied.

By the Court, McLaughlin, Circuit Judge.

[File endorsement omitted]

[fol. 163] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 164]

Supreme Court of the United States No. 892, October Term, 1966

International Longshoremen's Association, Local 1291, Petitioner,

PHILADELPHIA MARINE TRADE ASSOCIATION.

ORDER Amowing Certiorari—February 13, 1967

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted, and the case is placed on the summary calendar.

And it is further ofdered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ. EUBRARY CURLE COURT & L

TRANSCRIPT OF RECORD

Supreme Court of the United States

OUTOBRE TERM, 1987

No. 78

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, ITS OFFICERS AND MEMBERS, PETITIONERS,

22

PHILADELPHIA MARINE PRADE ASSOCIATION.

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SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1967

No. 78

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, ITS OFFICERS AND MEMBERS PETITIONERS,

vs.

PHILADELPHIA MARINE TRADE ASSOCIATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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[fol. A]

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 15804

PHILADELPHIA MARINE TRADE ASSOCIATION,

International Longshoremen's Association, Local 1291, Its, Officers and Members, Appellants.

APPEAL FROM ORDER OF UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, HOLDING APPELLANTS IN CONTEMPT FOR VIOLATION OF INJUNCTION

Appellants' Appendix—Filed April 5, 1966

[fols. 1-3]

IN UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RELEVANT DOCKET ENTRIES

- 4 Sept. 15 Order of Court that the defendant comply with the Arbitrator's Award issued on June 11, 1965, filed. 9-16-65 entered & notice mailed.
- 7 " 16 Notice of appeal by defendant, filed. Copy to Kelly, Deasey & Scanlan, Esqs.
- Sept. 16 Record transmitted to U. S. Court of Appeals.

[File endorsement omitted]

— Sept. 21 Supplemental record transmitted to U.S. Court of Appeals (re: exhibit).

22 Bond for costs on appeal in sum of \$250.00 with Fidelity and Deposit Company of Maryland as surety, filed.

1966

Feb. 28 Hearing sur rule to show cause why defendant should not be held in contempt for violating Order of 9/15/65 (Continued to 3/1/66 at 2 P. M.)

- 14 "28 Order of Court directing rule to be issued against defendants to show cause why they should not be held in contempt of Court for violating Order of 9/15/65—returnable 3/1/66 at 2 P. M. in Courtroom No. 5, filed. (3/1/66 entered)
- Mar. 1 Hearing sur rule to show cause why defendants should not be held in contempt of Court for violating Order of 9/15/65 Witnesses sworn Eo Die: The Court adjudges the Union, officers and men, guilty of civil contempt only. SENTENCE: Fine of \$100,000.00 per day effective this date at 2 P. M. The first payment to be made within 24 hours to the Clerk and every day thereafter as long as the Order of this Court is violated. March 7, 1966 at 2 P.M. reserved for further hearing if desired
- 15 Mar. 1 Defendant's demand for jury trial, and Order of Court refusing same, filed.
- 16 " 2 Transcript of hearing of 2/28/66, filed."
- 17 " 2 Transcript of hearing of 3/1/66, filed.
- 18 " 2 Notice of appeal of defendant, filed. (3-2-66 copies to Kelly, Deasey & Scanlan, Esq. and U.S. Court of appeals)
- 19 " 2 Copy of Clerk's notice to U.S. Court of Appeals, filed.

[fol. 4]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 38647

PHILADELPHIA MARINE TRADE ASSOCIATION,

V.

International Longshoremen's Association, Local 1291

Philadelphia, Pa.

Transcript of Testimony—February 28, 1966
Before Hon. Ralph C. Body, J.

PRESENT:

DEASEY, KELLY & SCANLAN by FRANCIS SCANLAN, Esq., for Philadelphia Marine Trade Association.

Freedman, Borowsky & Lorry by Martin Vigderman, Esq., for International Longshoremen's Association, Local, 1291.

[fol. 5]

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: This is in the matter of Philadelphia Marine Trade Association vs. International Longshoremen's Association, Local 1291, No. 15613.

Now, then, I understand Mr. Scanlan appears for Philadelphia Marine Trade Association?

Mr. Scanlan: Yes, Your Honor.

The Court: And Mr. Vigderman for the International Longshoremen's Association?

Mr. Vigderman: That's right, Your Honor.

The Court: You may proceed, Mr. Scanlan.

Mr. Scanlan: May it please the Court, we are here this afternoon in connection with the order which Your Honor entered in this case in September of 1965, the order having been entered on September 15, 1965.

Your Honor undoubtedly will recall that in that order you set forth that the defendant, International Longshoremen's Association, were ordered to comply with and to abide by an award of an impartial arbitrator, and under that award the employers on the waterfront had the right to set back gangs from an 8:00 o'clock start until 1:00 o'clock for any reason and without qualification.

The award has been complied with, Your Honor, from the time that it was entered up until Friday of last week, [fol. 6] and as a result of what happened since Friday until today, the entire Port of Philadelphia is shut down, and I would like to very briefly tell Your Honor what happened.

There were two employers who had hired gangs on Friday. These gangs were set back in accordance with the provisions of the contract and the arbitrator's award.

When the men reported at 1:00 o'clock they insisted upon being paid for four hours' pay in the morning. The contract and the arbitrator's award specifically provides that they are to receive one hour's pay for reporting in the morning and four hours' pay at 1:00 o'clock in the afternoon.

As a result the ships on which these men were to work remained idle on Friday, and on Saturday the men were ordered back again, and on Saturday they refused to work the ships unless they were paid for Friday morning, which they were not entitled to under Your Honor's order, the arbitrator's award and the contract.

On Saturday, in addition to walking off the job, these men went to other ships. There were two ships, as I understand it, at another pier, at Pier 98. The men went to those ships and they urged the men to walk off because of the arbitrator's award, and the men who were ordered for those ships walked off. I believe that there were a total of nine gangs completely within the two ships at [fol. 7] Pier 96 and the other ships that were at Pier 98.

Now, as a result of that, the Port of Philadelphia was closed down for all practical purposes on Saturday. The representatives of the PMTA got in touch with the officials of the ILA and there was a meeting in the Bourse Building, in the office of the PMTA, which was attended by all of the officials of the defendant herein; that's the president and all of the delegates, and in addition to that, the International Vice-President, Mr. Moak.

At that meeting it was agreed that the action of the men in knocking off work on Friday and on Saturday was unauthorized and was in violation of the contract and of the arbitrator's award, and the union officials stated through the representatives of the PMTA that they would urge the men to go back to work on Sunday morning, that is, those men who had been hired for work on Sunday morning.

Now, on Sunday morning as I understand it, some of the officials of the union went down and urged the mento go back to work. However, the men did not go back to work, and a telegram was sent on Saturday to the officials of the defendant local, and I believe these telegrams are very important, Your Honor. If I may, I would like to read them to you.

[fol. 8] The first telegram that was sent-

The Court: Sent by whom?

Mr. Scanlan: Sent by the PMTA to Richard Askew, President of the International Longshoremen's Association, Local 1291, and copies of this telegram were also sent to the other members who are listed herein.

The telegram reads as follows:

"We confirm meeting held at noon today at PMT offices in the Bourse Building attended by yourself and Messrs. Moak"—he is the International Vice-President—"Smith.

Devine, Talmadge, Johnson, Kane, Carter and Huggins representing ILA Local 1291 and myself and Messrs. Sobelman and Muldoon representing PMTA at which time the current portwide stoppage was discussed. At this meeting it was agreed by all present that the basis of the dispute was the so-called setback provisions which were established by contract in February, 1965, and further sustained by an arbitrator's award of June 11, 1965. You and the other representatives of the Union agreed that while you did not like the arbitrator's award it ordered the present case. You stated further that you deplored the actions of the men in not working the vessels involved and more especially their further action in knocking off all vessels [fol. 9] throughout the port. You and the other representatives of the Union promised you would be at the hiring center tomorrow, Sunday morning, and do all possible in urging all longshoremen to return to work in accordance with T the contract

Now, as I said, Your Honor, I have been informed that representatives of the Union did appear at the hiring center on Sunday, and the men did not return to work.

Now, this morning some representatives of the union appeared at the hiring center, but the men also did not return to work.

Now, up to this point I want to make it clear that we assumed that the officials of the ILA were doing everything within their power to get the men to go back to work, and that they intended to abide by the arbitrator's award. However, this morning at approximately 11:00 o'clock, I believe, sometime this morning, the PMTA, the Executive Secretary of the PMTA, Mr. Alfred Corry, received this telegram which is signed by the following people: James T. Moak, who is the International Vice-President; and Clifford Carter, who is also an International representative of the defendant, ILA; Richard Askew, who is the President, and the following other officials; namely, T. A. Ryan; Joseph M. Kane; Norman Huggins; Joseph S.

Kane; Paul Johnson; Alexander Talmadge; and John H. Smith.

[fol. 10] Now, on the third page of the telegram there is also Edward Devine and Richard L. Askew.

The telegram reads as follows: It is addressed to Mr. Corry. It says:

"Your telegram of February 26 is completely incorrect and does not state the position of the Union. We have never conceded that Weiss' award in the prior case was applicable to the present situation or any other situation, but on the contrary have always stated that it applies only to the particular dispute which was involved in that case. We have urged our people to refrain to any work stoppage and advised that we intend to resolve the matter in accordance with the grievance machinery under our collective bargaining agreement. It is obvious that your telegram is a self-serving declaration and is intended to entrap the Union into perpetuating the infamous award of Mr. Weiss."

In addition to that telegram, at the same time this telegram was received, signed by Richard L. Askew, President, Local 1291, International Longshoremen's Association, addressed to Mr. Corry who was the Executive Secretary of the plaintiff, PMTA:

"This is to advise that we are invoking the grievance [fol. 11] procedure under Paragraph 28 of the"—it says "corrective" but it should be "collective"—"bargaining agreement to resolve the dispute regarding the setback of the longshoremen gangs on Friday, February 25, 1966. We demand that a grievance meeting be held immediately to work out the dispute regarding the setback of the longshoremen on Friday, February 25. Please communicate with the writer so that we can arrange a mutually satisfactory time as quickly as possible for this grievance meeting."

Now, Your Honor, I think it is quite clear that since the Union has sent these telegrams and are insisting upon an arbitration that they were trying to do the same thing that they did when we were before Your Honor before, and that is to rearbitrate the award of Mr. Weiss. It is quite clear from the language of the telegram in which they say they are being entrapped into perpetuating the infamous award of Mr. Weiss and asking for another arbitration.

Now, the hearing that we had before Your Honor last time, I think, clearly pointed out that to insist upon rearbitrating this issue would make a mockery out of the entire arbitration process. This issue was submitted on the basis of an interpretation of the collective bargaining agreement and it applied to all circumstances, and when the award was handed down, it had the effect of a judg-[fol. 12] ment at law, and under the cases which we have cited in our brief before the Circuit Court of Appeals, it cannot be collaterally estopped where the same issue and the same parties are involved.

So now, what we thought the Union originally on Saturday and Sunday—we thought that this was primarily a wildcat strike and that the Union was doing everything in its power to correct the situation, but apparently our assumption was incorrect because actually what is happening here is the Union is trying to do what they did before. They do not want to abide by this award, and they do not want to comply with it, and on that basis, they are in yolation of Your Honor's order which makes it very clear that they are required to abide by and to comply with the award.

So, Your Honor, this is an extremely urgent matter. It is extremely important as far as the entire Port of Philadelphia is concerned. I have been advised that there is anywhere between 25 and 35 vessels today that are not working, that are not working solely because of this action of the Union. There have been other vessels which have been diverted from this port because of this issue. At the present time we do not know how many vessels have

been diverted, but it is an extremely urgent matter. It is causing tremendous economic loss to our people and [fol. 13] therefore I would ask Your Honor to set a hearing at which time we would like to have the Union cited for contempt of Your Honor's order and have the Union fined an amount which would be appropriate under the circumstances.

The Court: We will now hear from Mr. Vigderman.

Mr. Vigderman: Your Honor, it has been and is the position of the Local Union and its officers in this incident that these men should go back to work and, as Mr. Scanlan said, they have done everything in their power and are doing everything in their power that the men go back to work.

Now, it is true as we set forth in our argument before the Court of Appeals that it is our position that each arbitration must rest upon its own facts and that the fact that an issue may overlap from one incident to another does not bind a party to the arbitration, to the award of the arbitrator from the prior arbitration.

Now, I am not going to re-argue what was argued before Your Honor in the other case. I might only say this, and I say this with all sincerity. The officers of this Union have done everything that is humanly possible to get these men to go back to work in order to avoid just what is

happening here today.

- Now, these telegrams which were sent this morning were [fol. 14] sent, No. 1, to invoke the grievance procedure under the contract as was our position before Your Honor and before the Court of Appeals in the matter which will be argued next month in order that we demonstrate and make it clear and sincerely follow what we believe to be the proper interpretation of the contract.

However, that does not mean that we want the men not to go to work. This, to me and to the officers of the Union, should not have been done, and the men should have com-

plied with the instructions of the officers.

Now, as to other telegram which was sent, it was sent because of the one statement in the telegram to the officers of the Union that they agreed that the prior arbitration is binding on the present situation. Now, they may have agreed that the men should go back to work, but that's all that there was to the meeting, and the officers did say that they will make every effort to have the men go back to work, and they have done just that. The men, the officers of the Union, want to have this matter decided by the Court of Appeals, want to have it decided properly, and do not want in any way to tie up the port, especially under the present situation as it exists in world affairs today. We realize the importance of the situation, and the officers have done everything possible, everything that can be done, [fol. 15] and Mr. Scanlan will admit it, Mr. Corry will admit it, to see that the men go back to work.

Now, I don't know anything more that could be done to force these men to the grindstone.

The Court: Anything else to say, Mr. Scanlan?

Mr. Scanlan: Well, the only thing I want to say, Your Honor, is I certainly would not admit that the officers have done everything. I think up to a certain point we assume they have done everything, but certainly I think these telegrams that were sent today cast serious doubt as to their good intentions, and whether they have done everything, the telegrams speak for themselves, and it is quite clear they haven't done as much as they could have done, and I don't think it is proper to encourage these men to think that the matter should be rearbitrated, and therefore I don't think that they have done everything they should have done.

Mr. Vigderman: Your Honor, these telegrams were sent under advice of counsel in complete consistency with the position which we presented to Your Honor and to the Court of Appeals.

The Court: Counsel probably prepared them.

Mr. Vigderman: Oh, yes, but, Your Honor, yes, I want to say this, Your Honor, and I say this with as much sincerity as I can muster up: The officers did not want [fol. 16] this to happen. The officers wanted the men to go back to work, because this matter is being decided properly in accordance with law, and this very incident is something the officers never wanted and have tried to stop every way they can, every one of the officers unanimously.

The Court: Well, we will issue a rule to show cause why they should not be held in contempt, hearing to be held tomorrow afternoon at 2:00 o'clock. Now, if you prepare

that order in longhand we will sign it.

Mr. Scanlan: Very good, sir.

The Court: Now, then, the question as to who is to be held in contempt will be determined tomorrow.

Mr. Scanlan: Yes, sir.

The Court: But you prepare that now before we close court. We will sign it.

Mr. Scanlan: Very good, sir.

The Court: That will give everyhedy an opportunity to work this afternoon, tonight and tomorrow morning.

Mr. Scanlan: Yes, sir.

The Court: Now, I am scheduled, as you heard, with a jury case. Your matter will take precedence. Wherever we are in the jury trial, we will close down, unless we may have to hear some witness out of town or doctors or something like that. Of course, the other case might be settled. [fol. 17] You never know what happens with any sort of a case.

Write it out in longhand.

Mr. Scanlan: Your-Honor, I have legal paper here, I mean yellow paper. Could we have regular legal paper or do you want me—

The Court: Write it on yellow paper. It is just as good.

Mr. Scanlan: Very good, sir.

The Court: The only problem will be, we won't have any

copies; isn't that right?

Mr. Scanlan: I can have copies made, Your Honor. I can go back to the office and bring it down in about—
The Clerk: We have a machine that can make copies of that.

The Court: Is that a photostat?

The Clerk: Yes, sir.

Mr. Scanlan: We can have it photostated here, sir. I will write it out.

(Discussion off the record.)

Mr. Scanlan: Your Honor, I would like to read this to you and see if it conforms to Your Honor's instructions:

"ORDER

"And now, to wit, this 28th day of February, 1966, after [fol. 18] hearing, it is ordered that a rule shall be issued against the defendant, International Longshoremen's Association, Local 1291, to show cause why they shall not be held in contempt of court for violating the order of this Court issued the 15th day of September, 1965, returnable the first day of March, A.D., 1966, at 2:00 P.M. in Courtroom No. 5.

"By the Court:"

Mr. Vigderman: Your Honor, I would like to point out that he has in there, "and its officers," and the officers were not a party to this proceeding under which this motion is being brought.

The Court: The order is satisfactory as written.

Now, we can have photostats made of this.

Will you take them down and have photostats made and bring them back?

(Discussion off the record.)

The Court: Gentlemen, here we have the order. The Clerk will take the original.

There you are.

(Concluded at 2:30 P. M.)

[fol. 18a]

IN UNITED STATES DISTRICT COURT

ORDER-February 28, 1966

And Now, to wit, this 28th day of February, 1966, after hearing, it is hereby ordered that a rule shall be issued against the defendant, International Longshoremen's Association, Local 1291 and their officers to show cause why they shall not be held in contempt of court for violating the order of this Court issued the 15th day of September, 1965.

Returnable the 1st day of March A.D. 1966 at 2 P.M. in Courtroom No. 5.

By the Court:

Ralph Body, J.

[fol. 18b]

IN UNITED STATES DISTRICT COURT

DEMAND FOR JURY TRIAL-March 1, 1966

Defendant herewith demands a jury trial under the Constitution of the United States and under the Act of June 25, 1948, c. 645, 62 Stat. 844, 18 U.S.C.A. 3692.

Although this proceeding was not instituted against the officers of the defendant union, said officers have been included within the Show Cause Order of this Court. It is denied that the officers are parties in this proceeding, but if this Court should proceed in any wise against the individual officers, as indicated in the Order of this Court dated February 28, 1966, a jury trial, pursuant to the foregoing authority, is demanded on behalf of each and every one of the officers who may be enumerated by the Court, as well as on behalf of the defendant union. Said demand is without prejudice to assert any and all other defenses which have heretofore been or may hereafter be asserted, including, but not limited to, the jurisdiction of this Court.

[fol. 19]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 38647

PHILADELPHIA MARINE TRADE ASSOCIATION,

V

International Longshoremen's Association, Local 1291.

Transcript of Testimony—March 1, 1966

Philadelphia, Pa.

Before Hon. RALPH C. Body, J.

PRESENT:

Deasey, Kelly & Scanlan by Francis Scanlan, Esq., for Philadelphia Marine Trade Association.

FREEDMAN, BOROWSKY & LORRY by ABRAHAM FREEDMAN, Esq., and MARTIN VIGDERMAN, Esq., for International Long-shoremen's Association, Local 1291.

ORDER TO SHOW CAUSE

[fol. 20]

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: The Court is now ready to hear the matter of the Philadelphia Marine Trade Association against International Longshoremen's Association, Local 1291, No. 38647. I believe, Mr. Scanlan, you have the burden.

Mr. Scanlan: Yes, Your Honor, I do. I would like to call my first witness.

Mr. Freedman: If the Court please, before any witnesses are called, we would like to know just what the nature of this proceeding is, what it is that is alleged. We would also like to make our objections to the Court timely before this hearing begins, if Your Honor decides to hold a hearing.

The Court: Thave decided to hold a hearing and it is up to counsel to tell me what the matter is about. Your asso-

ciate was here yesterday. You know what it is about.

Mr. Freedman: I know, Your Honor, but there are rules which govern this Court and every other Court in the United States, and one of them is, one of the basic rules is that when you plead something, you have to put it down on paper.

We have a right to know what it is that we are being accused of or what it is that they allege. We would like to answer and prepare ourselves for any possible cross exam-

ination.

I would also like to renew at this time the original mo-[fol. 21] tion that I made; as a matter of fact, I will make it now, to dismiss on the grounds of jurisdiction. I would ask Your Honor whether Your Honor has examined the case of Sinclair versus Atkinson, a Supreme Court of the United States decision which clearly rules on the situation here, and says that Your Honor has absolutely no discretion, no right to entertain jurisdiction to enter an injunction in a case where you have a labor dispute, which is exactly what this is.

The Court: I don't share your views. Mr. Scanlan, will

you proceed.

Mr. Scanlan: Yes, sir.

The Court: Your objection is noted.

Mr. Freedman: Your Honor, it is not just an objection. I understand that this is a contempt proceeding. That is as much as I know about the case. If it is, we demand a jury trial. I just filed a formal paper before Your Honor came in.

The Court: I overruled that.

Mr. Freedman: Well, the statute gives us the right to it, Your Honor. We have a specific right by statute to a jury trial. Your Honor is not going to take that away from us.

The Court: So you say. You are overruled. Will you

proceed, Mr. Scanlan.

[fol. 22] Mr. Scanlan: Yes, sir.

Mr. Freedman: May I ask on what basis?

The · Court: You are overruled. You will be seated,

please

Mr. Freedman: Your Honor, I would like to make an objection also on the ground that there is no pleading here, that there is nothing here to show us what it is they are alleging. My associate doesn't know what they are alleging either.

We are entitled to a specific pleading. We are entitled to specific allegations which we can either affirm or deny. We object to the entire proceeding.

The Court: I understand.

Mr. Freedman: Your Honor knows that it is required by the rules. We are entitled to this, Your Honor, at the very least.

The Court: I understand your position. The witness will

be sworn.

Mr. Freedman: Well, does Your Honor disagree with my position about—

The Court: Yes.

Mr. Freedman: —about we being entitled to a pleading? The Court: I have said the hearing is going on at this [fol. 23] time. Do you understand the English language, sir?

Mr. Freedman: I certainly do, sir.

The Court: I said we are going on with the hearing.

Mr. Freedman: Well, a hearing on what? The Court: On the contempt proceedings.

Mr. Freedman: Well, if it is a contempt proceeding, the statute clearly spells out we are entitled to a jury trial. We have demanded it in writing.

We are also entitled to a pleading. If it is contempt, we are entitled to have spelled out the specific allegations, sir.

The Court: We will proceed with the hearing at this time. Mr. Scanlan.

Mr. Scanlan: Yes, sir.

The Court: The witness may be sworn.

Mr. Freedman: Let the record note that I am taking

exception to Your Honor's ruling.

The Court: Exception has been granted. Your objection is noted and overruled.

[fol. 24] ALFRED CORRY, SWOTN.

Direct examination.

By Mr. Scanlan:

Q. Mr. Corry, what is your position with the plaintiff in this action, the Philadelphia Marine Trade Association?

A. Executive secretary.

Q. And how long have you-been executive secretary of the plaintiff association?

A. Since July 1, 1954.

Q. And you have testified in this action previously, is that not so?

A. I have.

Q. And, Mr. Corry, I ask you are you familiar with the order of the Court that was handed down in this action on September 15, 1965?

A. I am, yes.

Q. And that order related to the enforcement of an arbitrator's award, is that correct?

Mr. Freedman: Objection, Your Honor, the order speaks for itself.

The Court: The order speaks for itself.

Mr. Scanlan: Very good. The order is also a matter of record.

[fol. 25] By Mr. Scanlan:

Q. Now, Mr. Corry, will you-

The Court: Just so it is understood, as far as the Court is concerned, the Court is considering the entire record in

this case and as part the proceedings to this date. ..

Mr. Freedman: I am going to object to that. We don't think under one caption in one case you can attach a whole string of independent actions which, in my judgment, have no relationship, no direct relationship, such as would enable Your Honor to attach them, to put them together. I would take formal objection to Your Honor's ruling.

The Court: We understand your objection, and it is over-

ruled.

By Mr. Scanlan:

Q. Now, Mr. Corry, will you please tell His Honor what you know about the present dispute on the waterfront, starting with what you know, with what happened on Friday of last week?

A. On Friday morning-

The Court: Let's see, what date was that?

The Witness: I believe it was the-

The Court: The 25th?

The Witness: Yes, sir. On Friday morning, at approximately 7:30 a.m. in the morning, I received a telephone call—

[fol. 26] Mr. Freedman: What time?

The Witness: Approximately 7:30 a.m. I received a telephone call from Mr. Evans, our chief dispatcher at the hiring center, who advised me that Murphy Cook & Company had set back gangs to one o'clock that afternoon and that there was confusion there, that Mr. Smith of the ILA stated—

By Mr. Scanlan:

Q. Who is Mr. Smith, Mr. Corry?
A. Business agent of the ILA.

Q. And who is Murphy Cook & Company?

A. One of the members of the PMTA, the stevedoring company.

Q. All right, proceed.

A. That Mr. Smith had said to Mr. Evans that this was not applicable in this case here and they could not set back. I assured Mr. Evans that it was applicable and I asked to talk with Mr. Smith.

Mr. Freedman: Mr. Corry, would you please keep your voice up, sir?

The Witness: Yes.

The Court: Mr. Corry, you have a lot of competition with these fans. This morning we had difficulty hearing any of the witnesses.

Mr. Freedman: Can I have that last answer read back

please?

[fol. 27] The Court: Yes, surely.

(The answer was read.)

The Witness: Mr. Smith got on the phone and I asked Mr. Smith what was the problem and he said the setback does not apply in this case, that it is another situation.

I asked him to elaborate on it and he just said it was another situation. I disagreed with Mr. Smith and told Mr. Smith that it did apply in accordance with the arbitration award, and that was the end of my conversation with Mr. Smith.

About 10:30 in the morning I happened to be down at the central dispatch office, and I met Mr. Moock, the International vice president, who said that he had heard rumor of some problems at 98 with reference to the setback.

By Mr. Scanlan:

Q. When you say "98," you mean-

A. Pier 98 South.

The Court: Who did you meet?

The Witness: Mr. Moock, the International vice president,

The Court: Spell his name.

The Witness: M-o-o-e-k. And we did not discuss that any further. I returned to the office and I attempted to contact Mr. Askew.

[fol. 28] By Mr. Scanlan:

.Q. Who is Mr. Askew?

A. Mr. Askew is president of Local 1291, and to ask Mr. Askew what he knew about the situation, but he wasn't available. I did speak with Mr. Kane, who, I believe, is the treasurer or financial secretary. I am not sure.

Mr. Kane gave me a number to call Mr. Smith. I called Mr. Smith on the phone and I asked Mr. Smith if he would be at Pier 98 in the event that there was a problem, and Mr.

Smith said that he would try to be there.

At about ten minutes past one I received a call from Mr. Tobin of Universal Stevedoring, who also had a ship at Pier 98 and who also had set back gangs from eight o'clock to one o'clock.

By Mr. Scanlan:

Q. How many gangs were set back on Mr. Tobin's ship?
A. There were a total of eight gangs, I think five on Mr.
Tobin and three on Murphy Cook. Now, I could check my records for the exact amount. I think there was a total of eight gangs between the two ships.

Q. And how many men are in a gang?

A. A general cargo gang, 22 men. And Mr. Tobin told me that the men on his ship would not turn to, that is, would not go to work unless they were paid for the morning period.

[fol. 29] Q. Paid how many hours?

A. Four hours for the morning period.

Mr. Freedman: T-o-b-i-n, Tobin? The Witness: That is right, sir.

By Mr. Scanlan:

Q. And under the contract, what are the men supposed to receive for reporting in the morning when they are set back at one o'clock?

Mr. Freedman: Objection, Your Honor.

The Court: Overruled.

Mr. Freedman: The contract speaks for itself, Your Honor.

The Court: Overruled. It is in the record.

By Mr. Scanlan:

Q. Would you answer that question, Mr. Corry?

A. When the setback is invoked, the men receive one hour for reporting in the morning plus an automatic four hours for the afternoon at one o'clock if they return to work. So about twenty minutes past one, Mr. Tobin and I proceeded to Pier 98 and we saw none of the officials there and from there we continued on to the dispatching center.

The Court: To the what center?

The Witness: The dispatching center, under the Walt Whitman Bridge. We were there a few moments when Mr. [fol. 30] Johnson and Mr. Devine, both business agents of Local 1291, came into the office.

I asked the two of them if they knew about the problem at 98, and they had told me they had just come from 98 but they had no knowledge of this particular problem.

I had a conversation with Mr. Johnson and Mr. Johnson said that he realized that the award—that they don't like the award but they have to live by it.

By Mr. Scanlan:

Q. What award is that, Mr. Corry!

A. The arbitrator's award on the set back.

Q. I see.

A. And he stated that he would be there on Saturday morning to do whatever he could to get the men to go to work.

On Saturday morning, between eight and 8:30, I don't recall the exact time, I received a call from Mr. Tobin telling me that the men refused to turn to unless they were paid for Friday. I went into the office—

Q. Now, Mr. Corry, may I stop you there?

A. Yes, sir.

Q. The gangs that were ordered back at one o'clock for Mr. Tobin's ship, did they report at one o'clock, do you know?

Mr. Freedman: If the Court please, I would like to interpose another objection to these proceedings. There is an [fol. 31] appeal pending from Your Honor's order. The entire record is in the Court of Appeals. The entire matter is now within the sole jurisdiction of the Court of Appeals and I think that for the additional reason, other than the ones I have advanced and others, Your Honor completely lacks jurisdiction to entertain this proceeding.

The Court: Overruled. Until the Court of Appeals has

acted, my order still applies.

Mr. Freedman: Sir?

The Court: Until the Court of Appeals has acted, there is no supersedeas granted of any kind. My order applies.

By Mr. Scanlan:

Q. I will repeat my question. Mr. Corry, do you know if the men who were set back on Friday morning reported at the pier at one o'clock?

A. To the best of my knowledge they did, but they would not go to work unless they were guaranteed payment for

the morning.

[fol. 32] Q. I see. Now, what were you testifying to with

respect to Saturday, the next day?

A. On Saturday morning as I said between 8 and 8:30 A. M. I received a call from Mr. Tobin telling me that the

men did not turn to on his ship and nothing was working at Pier 98.

I then went into the office-

The Court: Now, let's see, I have forgotten who Mr. Tobin is.

The Witness: From Universal Stevedoring, sir.

The Court: Yes.

A. I went into the office and I arrived at the office shortly after 9 A. M., and I started to receive calls that other vessels that were scheduled to work on Saturday, were being knocked off by longshoremen going up and down the waterfront, knocking the men off the ship, telling them to get off.

By Mr. Scanlan:

Q. Mr. Corry, do you know how many gangs were ordered to work for Saturday morning?

A. Yes, I have it here.

On Saturday morning, February 26, there were fortyeight gangs ordered and a total of fourteen ships involved.

The Court: How many ships?

The Witness: Fourteen ships that were scheduled to [fol. 33] work on Saturday morning, and a total of forty-eight gangs had been ordered on Friday for Saturday.

By Mr. Scanlan:

Q. Now, after you were informed that the ships were being knocked off on Saturday morning, what did you do?

A. I was talking with Mr. Muldoon, who is president of the Philadelphia Marine Trade Association, who was at 98 and talking with several of the officials down there, and a meeting was arranged with ourselves and the union for noontime on Saturday.

Q. Where was that meeting held?

A. In the offices of the Philadelphia Marine Trade Association.

Q. And who attended that meeting?

- A. On behalf of the Philadelphia Marine Trade was Mr. Sobelman, our vice-president.
 - Q. Go ahead.

A. Mr. Muldoon, our president, and myself.

Q. And who attended that meeting on behalf of the union?

A. On behalf of the union, it was Mr. Moock, the International vice-president, Mr. Carter, also a vice-president, I believe, Mr. Askew, the four business agents, namely, Mr. Johnson, Mr. Talmadge, Mr. Devine, and Mr. Smith, Mr. Cane, and I believe a Mr. Huggins of—all of Local 1291 were present.

[fol. 34] The Court: Who is Mr. Askew?

The Witness: Mr. Askew is president of Local 1291, sir. The Court: Any other officers there besides Mr. Askew? The Witness: The four business agents and Mr. Cane and Mr. Huggins, and I believe their financial secretary or assistant financial secretary. I don't know exactly what their titles are, sir.

The Court: Thank you.

By Mr. Scanlan:

Q. Now, what happened at that meeting, Mr. Corry?

A. When the union came in, we sat down and discussed the situation, and the union stated that they realized that the arbitrator's award was in effect, they did not like the arbitrator's award, and they suggested that we renegotiate that portion of the contract, modify it in some way or another.

This we refused to do and we discussed the long—we discussed it further, and at the end of the meeting, it was my understanding, my complete understanding, that the union stated that they would be on the waterfront on Sunday morning to do whatever they could to get the port back to work.

Q. What time did that meeting break up?

A. Oh, 3:30, quarter of 4, in that neighborhood there, I guess.

[fol. 35] The Court: Did you say to start to work on Sunday morning?

The Witness: Yes, sir, we had gangs ordered for Sunday

morning.

The Court: How many?

The Witness: There were nine ships scheduled to work on Sunday morning, a total of thirty-one gangs that were ordered.

Mr. Scanlan: I would ask the reporter to mark this tele-

gram as P-1 for identification.

(Telegram dated February 26, 1966, was marked Exhibit P-1 for identification.)

The Court: P-1 is what?

Mr. Scanlan: It is a telegram which I will show to Mr. Freedman and have Mr. Corry identify.

The Court: Dated-?

Mr. Scanlan: It is dated February 26, 1966.

The Court: Thank you.

By Mr. Scanlan:

Q. Mr. Corry, after the meeting was concluded between you and the representatives of the PMTA and the representatives of the union, did you send the union a telegram?

A. I did. [fol. 36] Q. Mr. Corry, I show you a telegram that has been marked P-1 for identification and ask you if you can identify it.

A. Yes, sir, this is the telegram.

Q. Would you please read for the record what the telegram says.

The Court: Not too fast, please.

A. All right.,

This was addressed to Richard Askew, president, International Longshoremen's Association, 1291 Lafayette Building, Philadelphia, and copies of this telegram were

sent to all of the people that attended on behalf of the ILA at that meeting:

"We confirm meeting held at noon today at PMTA offices in the Bourse Building attended by yourself and Messrs. Moock, Smith, Devine, Talmadge, Johnson, Cane, Carter and Huggins representing ILA Local 1291 and myself and Messrs. Sobelman and Muldoon representing PMTA at which time the current port-wide work stoppage was discussed. At this meeting it was agreed by all present that the basis of the dispute was the so-called setback provisions which were established by contract in February, 1965, and further sustained by an arbitrator's award of June 11, 1965. You and the other representatives of the [fol. 37] union agreed that while you did not like the arbitrator's award it ordered the present case. You stated further that you deplored the actions of the men in not working the vessels involved and more especially their further action in knocking off all vessels throughout the port. You and the other representatives of the union promised you would be at the hiring center tomorrow, Sunday morning, and do all possible in urging all longshoremen to return to work in accordance with the contract."

By Mr. Scanlan:

Q. Now, Mr. Corry, how many gangs of men were ordered to work on Sunday; that was February 27?

A. On Sunday, there were nine ships that were scheduled to work and a total of thirty-one gangs.

Q. Did you receive any information regarding those gangs that were ordered for work on Sunday?

A. Yes, I received phone calls from the companies involved telling me that the gangs had not turned to and the ships were not working.

Q. Now, Mr. Corry, how many gangs of men were ordered to work on Monday, February 28?

A. There were twenty-two ships in port scheduled to work, and sixty gangs were ordered.

[fol. 38] By Mr. Scanlan:

Q. Now, on Monday, February 28th, Mr. Corry, were you at the hiring center or at any other place on the water-front?

A, Yes, I was. I was-

Q. Where were you?

A. I first went to the hiring center, arriving there at about quarter of 7 in the morning.

The Witness: And I remained at the hiring center until approximately 7:30 A. M., and then went to Pier 98 South.

[fol. 39] By Mr. Scanlan:

Q. Now, while you were at the hiring center, did you see

any of the officials of the defendant local there?

A. When I was at the hiring center yesterday morning, I saw Mr. Talmadge. He is the only one I remember seeing at the hiring center.

Mr. Freedman: What day was this?

The Witness: Yesterday, yesterday, the 28th.

By Mr. Scanlan:

Q. He was the only official of the defendant that you saw!

A. At the time that I was there, yes.

Q. Now, how long were you there, Mr. Corry?

A. Oh, I would say approximately a half hour, three-quarters of an hour.

Q. How many men were present at that time?

A. Well, it is hard to say. There were quite a number of them.

Q. What would your best estimate be?.

A. Several hundred.

Q. Did you have any conversations with any representative of the union at the hiring center?

A. No, sir.

Q. What did you do after you left the hiring center?

A. I went to Pier 98.

[fol. 40] Q. And tell us what you saw at that point.

A. I waited there to see what would happen at 8 o'clock and I saw Mr. Johnson there and I saw Mr. Carter, I believe, that was also there, and then later on Mr. Moock.

Q. Did you have any conversations with those men?

A. No, sir.

Q. Did the men who were at the pier, at Pier 98, did they turn to and work the ships?

A. No, sir.

Q. How many ships, if you know, were at Pier 98 yesterday morning?

A. I think there were four or five. I have it here if you give me a chance to count it up.

There were six ships that I have here.

Q. That were at Pier 98 yesterday?

A. Between 96 and 98.

Q. Yes. And those ships were not worked; is that correct?

A. That is right, sir.

Q. Now, Mr. Corry, was there a meeting of the Philadelphia Marine Trade Association held yesterday morning?

A. It was.

Q. What time was that meeting held?

A. 11 A. M.

Mr. Scanlan: I would ask the reporter to mark this tele-[fol. 41] gram which is dated February 28, 11, addressed to Mr. Corry, as P-2 for identification.

(Telegram dated February 28 was marked Exhibit P-2 for identification.)

Mr. Scanlan: I would ask the reporter to mark this other telegram which is dated February 28, 11:15, and addressed to Mr. Corry, as P-3 for identification.

(Telegram dated February 28, 11:15, was marked Exhibit P-3 for identification.)

The Court: Whom was the first one addressed to?

Mr. Scanlan: The first one, Your Honor, was addressed to Mr. Corry. Both telegrams were addressed to Mr. Corry.

By Mr. Scanlan:

Q. Now, Mr. Corry, during that meeting of the PMTA yesterday, did you receive two telegrams from the union?

A. I.did.

Q. Mr. Corry, I show you-

The Court: When you refer to the union, whom are you referring to?

Mr. Scanlan: The defendant union.

The Court: All right.

[fol. 42] By Mr. Scanlan:

Q. Mr. Corry, I show you two telegrams, one of which has been marked P-2 for identification, and ask you if you can identify that telegram.

A. Yes, I can.

Q. I also show you another telegram which has been marked P-3 for identification and ask you if you can identify that telegram.

A. Yes, I can.

Q. Now, Mr. Corry, referring first to the telegram.

marked P-3, will you read that for the record.

A. "Your telegram of February 26th, 1966, is completely incorrect and does not state the position of the union. We have never conceded that Weiss's award in the prior case was applicable to the present situation or any other situation but on the contrary have always stated that it applies only to the particular dispute which was involved in that case. We have urged our people to refrain to any work stoppage and advised that we intend to resolve the matter in accordance with the grievance machinery under our collective bargaining agreement. It is obvious that your telegram is a self-serving declaration and is intended to entrapthe union into perpetuating the infamous award of Mr. [fol. 43] Weiss."

Q. Now, who signed that telegram, Mr. Corry?

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A. James T. Moock, Clifford Carter, Richard L. Askew, T. A. Ryan, Joseph M. Cane, Norman Huggins, Joseph S. Cane, Paul Johnson, Alex Talmadge, John J. Smith, Edward Devine.

Q. Those are all officials of the defendant union?

A. Yes, sir.

Q. Now, Mr. Corry, will you read for the record the tele-

gram that has been marked P-2.

A. "This is to advise that we are invoking the grievance procedure under Paragraph 28 of the collective bargaining agreement to resolve the dispute regarding the setback of the longshoremen gangs on Friday, February 25, 1966. We demand that a grievance meeting be held immediately to work out the dispute regarding the setback of the long-shoremen on Friday, February 25. Please communicate with the writer so that we can arrange a mutual satisfactory time as quickly as possible for this grievance meeting."

Signed-

Q. Who signed that telegram?

A. Signed Richard L. Askew, president, Local 1291.

Q. Now, Mr. Corry, how many gangs of men were ordered to work today, Tuesday, March 1?

[fol. 44] A. There were twenty-two ships in port scheduled to work and a total of sixty-five gangs were ordered.

Q. To your knowledge were any of those ships worked today?

A. No, sir.

Q. Now, Mr. Corry, can you tell us how many times the setback provisions of the contract were invoked from the time the contract was signed, which I believe was February 13, 1965, up until the time of the court's order in this case which was September 15, 1965?

A. Yes, sir, I can. I have it broken down several ways

if you want me to-

Q. How do you have it broken down?

A. From the time that we signed the last agreement to Friday, to this past Friday, the setback clause was invoked seventy-two times. The setback clause was also—was invoked on three occasions before the final disposition of the arbitrator. That's from the inception of the new agreement until the time that the arbitrator ruled, it was only invoked three times.

It was invoked twenty three times from the time the arbitrator submitted his award in June until the court order was issued in September.

Q. Now, Mr. Corry, how many times was the setback provision invoked from the time of the court's order in this case, September 15, 1965, up to Friday of last week? [fol. 45] A. Forty-six times.

Q. Now, Mr. Corry, did you request the members of the Philadelphia Marine Trade Association to submit to you an estimate of the damages which they have suffered as a result of this tie-up from Friday until today?

A. Yes, sir, I have.

Mr. Freedman: Objection, Your Honor. Up to this point nothing has been said about damages. Your Honor will now see not only the evil in our being utterly unprepared to predict what they were doing up until now, but now we have got damages in the picture. We are entitled to have these before us with all the discovery processes so that we can meet them.

The Court: You are a trial lawyer of long standing and a very able trial lawyer and you knew well enough, sir, that this would arise.

Objection overruled; exception noted.

Mr. Freedman: You mean, is Your Honor stating, that I will have to guess what they are trying to put into evidence?

The Court: No, but you knew this would arise.

Mr. Freedman: I could not know it.

The Court: Objection overruled; exception noted. I have ruled, sir.

[fol. 46] By Mr. Scanlan:

Q. Now, Mr. Corry, did you answer my question, first of all?

I will repeat it:

Did you request the members of the Philadelphia Marine Trade Association to submit to you their estimate of the damages that they have suffered from Friday of last week up until today?

A. Yes, I did.

Q. And have some of the members submitted those estimates to you?

A. Some of them have, sir, yes.

Q. Now, what is the total amount of the damages that have been sustained up until the present time based on the information which you have?

The Court: Don't answer the question.

Mr. Freedman: Objection, sir.

The Court: Don't answer the question.

Mr. Freedman: This is not the way to prove damages. First of all, it is not only hearsay, but any man who has incurred damages has got to get up and prove it and itemize it and show what damages, not only what damages he suffered, but expose himself to cross-examination. He can't testify to what somebody else told him what the damages happen to be.

[fol. 47] The Court: Well, I think you are right. Objec-

tion sustained.

Mr. Scanlan: If Your Honor please, so that Your Honor will know why I am engaging in this line of questioning, this is a contempt proceeding, as Your Honor well knows, and we are trying to bring out the amount of damages so that Your Honor will have it before you in connection with a fine which I will ask—

The Court: You understand, of course, I can't award any damages to any shipowner, stevedoring concern or pier owner or anybody concerned at this time.

Mr. Scanlan: Yes, Your Honor, and I am not asking for that, sir.

The Court: All right. In view of that I will-

Mr. Scanlan: I am only giving this information, sir, so

Your Honor will have it before you.

The Court: I will assume the evidentiary value is entirely for me because it is based entirely on hearsay evidence, and Mr. Freedman will have a right of cross-examination of the people that gave you the information.

Mr. Scanlan: Yes.

Mr. Freedman: That doesn't make it admissible, sir. It can't make it admissible. Your Honor is only a human being and subject to all the frailties of human beings, one [fol. 48] of which is the hearsay rule.

The Court: You hear me. I don't know whether I will-

give it any evidentiary value at all.

Mr. Freedman: But Your Honor should not even hear it. Your Honor has no right to hear it.

The Court: If I choose to do so, I may do so, and I plan to do so, Mr. Freedman.

Objection overruled.

The evidentiary value is with me, my discretion, whether I want to do anything about it or not.

Mr. Scanlan?

Mr. Scanlan: Yes, sir.

The Court: Whether I will or not, I don't know. It depends on how the case turns.

Mr. Freedman: Exception, Your Honor:

The Court: You bet.

Mr. Scanlan.

[fol. 49] By Mr. Scanlan:

Q. Mr. Corry, what is the total amount of damages that were submitted to you up to the present time?

A. \$463,271.

Q. And how many companies have submitted their estimates to you?

A. So far there have been 24 different companies.

Q. Now, you have the estimates before you, I believe.

A. Yes, sir, I do.

Q. Will you please read the companies that have submitted the estimate and the amount for each company.

Mr. Freedman: The same objection, Your Honor.

The Court: The same ruling.

Mr. Freedman: To the entire line of examination.

The Court: Overruled.

Mr. Freedman: I think it is highly improper and most prejudicial. It is put in intended to influence Your Honor in some way, shape, or form, and this kind of hearsay evidence—

The Court: No, Mr. Freedman, I have tried cases before,

and this won't influence me one way or another.

Mr. Freedman: Your Honor is still a human being. Your Honor knows that it is hearsay. No matter what the [fol. 50] purpose may be, it is still hearsay, and it is still inadmissible, and it is going to affect Your Honor one way or the other. Whether it affects you from the standpoint of damages or from some other standpoint, the fact is it is going to affect you.

The Court: Thank you for explaining it to me, but you

did that before, and I have overruled you.

Mr. Freedman; Well, I have a job to do, Your Honor. The Court: You are doing it very well, very nicely.

Objection overruled.

Mr. Freedman: Apparently it is not very nicely, because I don't seem to be having any effect on Your Honor.

The Court: Well, depending on what you say, it might have effect.

By Mr. Scanlan:

Q. Will you please answer my question, Mr. Corry.

A. Cunard Steamship Company, Ltd., \$100,000.

Lavino Shipping Company, \$75,000.

American Export Isbrandtsen Lines, \$64,420.39.

J. A. McCarthy, \$52,030.

The Court: On these amounts, these names do not ring a bell with me, whether it is a shipping company, a steve[fol. 51] doring company, or what. Cunard is—

By Mr. Scanlan:

Q. Would you identify them for the Court.

A. Cunard is a steamship operator.

The Court: Steamship operator?

The Witness: Right.

Lavino are agents and stevedores.

American Export Isbrandtsen Lines are steamship owners and operators.

J. A. McCarthy are steamship agents and stevedores, as well as terminal operators.

The Court: What was the figure?

The Witness: \$53,030.

By Mr. Scanlan:

Q. Isn't that \$52,000, Mr. Corry?

A. I am sorry, \$52,030.

Norton Lilly & Company, steamship agents, \$21,562.48. Farrell Lines, steamship operators, \$20,000.

States Marine Isthmian, steamship operators, they have \$9113.08 on one ship and \$9716.66 on another ship.

Moore-McCormack Lines, steamship operators, \$15,000.

Independent Pier Company, stevedores and terminal op-[fol. 52] erators, \$12,255.

Stockard Shipping & Terminal, steamship agents and

terminal operators, \$14,000.

B. H. Sobelman & Company, steamship agents and steve-dores, I believe \$16,200.

Keystone Shipping Company, steamship agents, \$10,000. Grace Line, steamship operators, \$5000.

Hinkins Steamship Agency—the are agents—\$2000.

National Sugar & Refining Company—that is the one uptown, where they have the sugar refinery, and they have \$2700 that it has cost them.

Texas Transport & Terminal Company, steamship agents, \$3500.

Rice Unruh & Company, steamship agents, they had two vessels involved, one \$2878.54, another vessel \$2250.

Murphy Cook & Company, stevedores, \$7500.

'United States Lines, steamship operators and terminal

operators, \$7000.

John C. Rogers, steamship agents, three ships involved, \$5650 on one, \$1600 on another one, and \$2100 on the third one.

Furness Withy, they are owners and agents, \$6000.

[fol. 53] Dichman; Wright & Pugh, steamship agents, \$9600.

Atlantic & Gulf Stevedores, Inc., terminal operators and stevedoring company, \$868.45.

Maritime Ship Cleaning & Maintenance Company, \$768.

I think that is it.

Mr. Scanlan: Cross examine.

The Court: Mr. Freedman.

Mr. Freedman: If the Court please, I would like to make it very clear for the record that by this participation in this proceeding I do not waive, we do not waive, any of the defenses which we have asserted or the right to a jury trial, which Your Honor has denied us.

And I would like to reiterate at this time the fact that we are at a tremendous disadvantage in not knowing—

The Court: I have heard you on that. You don't need

to repeat. I have heard you.

You may proceed with the cross examination, if you have any. If you have any objections, you may make them for the record.

Will you be seated, Mr. Corry, and examine the witness from the chair.

[fol. 54] Mr. Freedman: It is customary out of respect

for the Court, I never sit when I address the Court.

The Court: Well, stand back by the chair then. I fix the

The Court: Well, stand back by the chair then. I fix the rules in this Court, sir, and not you.

Mr. Freedman: I wasn't attempting to. I was simply following the course—

The Court: Yes, you were.

Mr. Freedman: I have never sat when I addressed the judge and I don't intend to.

The Court: Very good. Will you proceed.

Cross examination.

By Mr. Freedman:

Q. Mr. Corry, are you aware of the efforts of the ILA officers to get these men back to work?

A. As I stated before, Mr. Freedman, when we left the

meeting on Saturday-

Q. Would you keep your voice up a bit, please.

A. When we left the meeting on Saturday, they assured us that they would do everything to get the men back to work. I can only testify to what I actually witnessed on Monday and today, and at no time did I hear any of the business agents or the officials direct the men to go to work.

Q. Didn't you hear many speeches or weren't you aware that almost every one of the agents made speeches and [fol. 55] urged the men, with all the vigor at their com-

mand, to return to work?

Mr. Scanlan: Objection.

The Witness: I did not hear any speeches, sir.

The Court: Overruled.

.By Mr. Freedman:

Q. You didn't personally hear them?

A. No, sir.

Q. Are you saying you are not aware of any of the

speeches made by any of the officers?

A. I said when I was at the waterfront today and yesterday, I did not hear any official make any speeches to any of the men urging them to go to work.

Q. You were on the waterfront just for a brief period. Now, are you saying that you don't have knowledge of any statements which the union officials made to the men repeatedly and the efforts which they made to get these men back to work?

A. You said I was there for a brief period, Mr. Freedman. I was there this morning until 8:30, twenty minutes to nine, at Pier 98 from about ten after seven this morning

until that time, and yesterday, when I arrived at Pier 98, at 7:30, I didn't leave there until about 8:30.

Q. What about Friday and Saturday?

A. I did not hear them. I wasn't there.

Q. And you are not aware of any statements which the [fol. 56] union people made?

A. No, sir, I am not.

Q. Don't you know that Mr. Askew made about a dozen speeches to the men at different places in an attempt to get them back to work?

Mr. Scanlan: Objection, sir.

The Court: He may ask that question. Overruled. Does he know whether or not Mr. Askew made a dozen speeches—

Mr. Freedman: That is all I am asking.

The Witness: I do not know.

By Mr. Freedman:

Q. Didn't you hear about it?

A. I did not.

Q. Don't you know that every one of the other agents and officials from time to time addressed the men at different places in an attempt to get them back to work?

A. I did not hear them. I did not see them.

Q. Well, don't you know that the union officials even went so far as to distribute all along the waterfront pamphlets which urged the men in the strongest terms to go back to work and settle their problems?

A. This morning I was given a pamphlet by Mr. Smith. I was given a pamphlet that was being distributed by Mr.

[fol. 57] Smith this morning at Pier 98.

. Q. Have you got that pamphlet?

A. I don't have it on me.

The Court; Do you have it with you in court?

The Witness: No, I don't have it with me, sir.

The Court: Mr. Scanlan, do you have it?

Mr. Scanlan Yes, I have a copy of one, I believe, sir. The Court: Is that the one that was given to the witness? The Witness: The one Mr. Smith gave me, I can tell when I see it. In fact, he gave me several copies. Yes, this is the one Mr. Smith gave me this morning. He gave me several of them.

Mr. Freedman: Would you mark this for identification, please.

(Single-page document dated February 28, 1966 was marked Exhibit No. R-1 for identification.)

The Court: The pamphlet is dated what, please?

By Mr. Freedman:

Q. Tell us the date it has.

A. February 28, 1966.

The Court: Thank you. You are asked to read it now.

[fol. 58] By Mr. Freedman:

Q. That was yesterday?

A. This was this morning.

Q. It is dated yesterday.

A. It is dated yesterday, and it was given to me this morning.

Q. All right, go ahead.

A. "Attention: Members of ILA, Local 1291.

"Your officers are unable to understand how some waterfront politicians can convince our members that our present contract is so bad, when the fact of the matter is that the longshoremen in the port of Philadelphia now have the best contract of any longshoremen in the country, bar none. The only longshoremen who have a contract that even comes close to ours are the longshoremen in the Cholsea section of New York. Our contract provides for—"

[fol. 60] The Witness: "Our contract provides for:

- "1. Basis wage rate of \$3.46 per year.
- "2. 11 paid holidays—this amounts to \$304.48 per year.

- "3. One week's vacation for 700-hour men. This amounts to \$138.40 per year.
- "4. Two weeks' vacation for 1100-hour men. This amounts to \$276.89 per year.
- 1300 hours and worked 700 hours in five or six previous years. This amounts to \$415.20.
- "6. Four weeks' vacation for men who have worked 1500 hours and who worked 700 hours in ten of twelve previous years. This amounts to \$553.60 per year.
- "7. A increase in the monthly pension from \$100 to \$175, effective January 1, 1965.
- "8. A monthly pension of \$87.50 for widows and depen-[fol. 61] dent mothers for life, effective January 1, 1965.
- * *9. Increased welfare benefits, including major medical benefits up to \$10,000 for a man and his family and dependent mother.
- "10. A guaranteed annual wage which will be improved as time goes on.
- "11. Day-before hiring so that our men do not have to shape up every morning.
- "12. A new hiring hall, heated, with all conveniences. This will be ready next week.
- "All of the above was accomplished by your officers because we have in the past demonstrated that ours is a responsible union. We must tell our membership with all sincerity at our command that this business of men who may have a dispute on one ship or on two ships or on three ships going out and knocking the port off can only cause great peril to the union. Every day in the week there is some dispute in the port on some ship or ships, and if the longshoremen are going to knock the port off every time there is a dispute on a ship, the men will always be out of work.

"The employers went into Court in September, 1965, when there was a dispute with Nacirema over the push[fol. 62] back. Your officials took the position that the arbitrator's award was a one-shot opinion and was not binding in other disputes. Judge Body held that the arbitrator's award was binding. He handed down his order on September 15, 1965. Our lawyers filed an appeal with the United States Court of Appeals on September 16, 1965, the next day. That appeal is scheduled to be argued on April 14, 1966, next month.

"Your officials agree that the employers are abusing the men with this push-back. We are doing everything possible to change this ruling, and we don't intend to stop it until it is changed. We do say, however, that knocking off the

port is not the way to change it.

"We have sent telegrams to the PMTA to set up a meet-

ing to try to work out a solution to this dispute.

"We again urge our members to return to work while we work this out."

Signed, "The Executive Board, Local 1291, ILA."

By Mr. Freedman:

Q. Now, Mr. Corry, I show you another pamphlet dated February 26, and ask you to read that to the Court.

A. "Members of Local 1291, ILA:

"Because several companies pushed back gangs on Friday, February 25, 1966, those gangs refused to turn to that [fol. 63] afternoon at 1:00 p.m. and also the same gangs refused to turn to on Saturday morning, February 26th.

"These men then proceeded to go to the piers throughout the Port and knock off about forty other gangs that were

working.

"This protest by our members grew out of resentment to a ruling made by Milton M. Weiss, Arbitrator, that the employers could invoke the push back for any reason whatsoever. "All of your officials, including our International Vice President, Mr. James T. Moock, fought vigorously in the arbitration proceeding in an effort to persuade the arbitrator as to the true intent of the negotiators. Nevertheless he did rule against us.

"When Mr. Weiss made this ruling, all of your officials felt that his decision was a flagrant miscarriage of justice. Our feelings have not changed one iota since that time. We were convinced, and we remain convinced, that the Arbitrator's decision did not represent the intent of the nego-

tiators.

"We know, and all of our men know, that there are arbitration provisions in every labor contract of any importance and we also know that an arbitrator, like any other [fol. 64] judge, is not infallible and will make some good decisions and some bad decisions. Since we are governed by the rule of law we must accept these decisions until they are reversed—or run the risk of getting into serious trouble.

"We are taking an appeal from the Arbitrator's ruling with the hope that we can get it set aside or modified to the extent that our men will not have to come to a ship at 8:00 o'clock in the morning and then be told that they are pushed back until 1:00 o'clock.

"We never intended that kind of thing in the negotiations, and we do not believe that we did not convince the

Arbitrator of that fact.

"The following named I.L.A. officials urge all of our men to return to work and allow this dispute to be settled through proper channels.

"James T. Moock, International Vice President

"Glifford Carter, A.C.D. Vice President

"Richard Askew, President Local 1291

"Joseph S. Kane, Asst. Fin. Sec'y

"Norman Huggins, Sec'y-Treas.

"John Smith, Business Agent

"Paul Johnson, Jr., Business Agent

"Alex Talmadge, Business Agent
"Edward Devine, Business Agent."

[fol. 65] Mr. Freedman: Will you mark this one R-2, sir.

(Document headed "Members Of Local 1291, ILA," was marked Exhibit R-2 for identification.)

By Mr. Freedman:

Q. Mr. Corry, you said that you saw Mr. Talmadge at the dispatching office when you went there. What date was that?

A. I believe it was yesterday morning.

Q. Yesterday morning? Did you see Mr. Talmadge?

A. Did I see him?

Q. Yes.

A. I said I saw him.

Q. Did you see what he was doing?

A. He was at the dispatching counter.

Q. What was he doing?

A. He was dispatching longshoremen.

Q. Did any ships work that day?

A. Yesterday?

Q. Yes.

A. No, sir.

Q. Mr. Talmadge is an agent of the ILA, the defendant union here, is he not?

A. Yes, he is.

Q. What was your last answer; did you say the ships did or did not work that day?

[fol. 66] A. Did not, to the best of my—in fact, I know

they did not work yesterday.

Q. You are sure that no ships worked yesterday?

A. To the best of my knowledge, no ships worked yesterday.

The Court: Let's see, yesterday was Monday; right? The Witness: Monday.

By Mr. Freedman:

Q: What about Sunday?

A. There was one ship at 179 that had about four or five hours' work, and I believe that ship did work, although and I believe there was a grain ship that also worked.

Q. Is that all?

A. To the best of my knowledge, yes.

Q. There weren't any other ships working?

A. To the best of my knowledge.

Q. That's what I am testing, your knowledge. That's all.

The Court: Any redirect, sir?

Mr. Scanlan: No, sir.

The Court: Step down, please.

The next witness.

Mr. Scanlan: Mr. Muldoon.

The Court: Leave the papers up here. They belong in [fol. 67] evidence.

The Witness: I am sorry. I forgot.

The Court: Wait a minute, and also the items which you read from, no, just the-

Mr. Scanlan: Just the pamphlet.

The Court: —the pamphlets that were marked by Mr. Freedman.

Mr. Scanlan: Mr. Freedman's pamphlets.

The Court: You have them?

Mr. Freedman: I would ask Your Honor's permission. I would like to have permission to reproduce it and offer it. The Court: Let them up here and remove them at the

end of the hearing.

Mr. Freedman: Surely.

The Court: You don't want to do it right this minute. do you?

Mr. Freedman? No.

The Court: All right. Maybe if you want to keep it at counsel table, there is no objection as far as I am concerned.

Mr. Freedman: No, it is all right. I wanted to look at it and reproduce it, and put in a copy. It is just for identification; it wasn't in evidence yet. It doesn't matter. [fol. 68] The Court: All right.

Swear the witness, please.

Mr. Freedman: I left it there, Your Honor, if he wants to see it.

Francis Muldoon, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Scanlan:

Q. What is your position with the plaintiff association, the Philadelphia Marine Trade Association?

A. President, Philadelphia Marine Trade Association.

Q. And-1

Mr. Freedman: Would you keep your voice up a bit, Mr. Muldoon?

By Mr. Scanlan:

Q.—in addition to being president of the Philadelphia Marine Trade Association do you hold any position with a company which is a member of the Marine Trade Association?

A. President of J. A. McCarthy, Incorporated.

Q. And what type of work does J. A. McCarthy, Incorporated, do?

[fol. 69] A. Agents, stevedores, terminal operators.

Q. Now, Mr. Muldoon, what piers are operated by J. A.

McCarthy, Inc., for its subsidiaries?

A. Piers 96, 98, 100, South, south side of Pier 82, South.

The Court: Wait a minute, you are going a little too fast.

The Witness: Excuse me.

The Court: I am not taking it in shorthand. Just talk in the general direction of counsel, not in my direction.

Pier 96, 98—

The Witness: 100 South.

The Court: Yes.

The Witness: —the south side of Pier 82, South, and the south side of Pier 78, South.

. The Court: Thank you. All right.

By Mr. Scanlan:

Q. Now, berths are available for the docking of ships at Pier 96, South?

A. On the north side of Pier 96, South, there are two berths, and on the south side, either two fr three, depending on the size of the vessels.

Q. And how many berths are available at Pier 98, South?

A. On the north side of Pier 98, South, three; on the [fok 70] south side of Pier 98, South, three.

Q. Now, Mr. Muldoon, on Friday of last week, was there a vessel docked at Pier 96 that was being worked by Mr. Tobin of Universal Stevedoring Company?

A. Yes, there was a vessel of the States Marine, Isth-

mian Company, at the north side of Pier 96, South.

Q. Was there also a vessel at Pier 96, South, that was being stevedored by Murphy-Cook & Company?

A. Yes, Cunard Line had the SS "Rikke Skou."

Q. Now, do you know, Mr. Muldoon, if those two vessels were the vessels on which the gangs had been set back for a 1 o'clock start on Friday afternoon?

A. Yes, they are the two vessels.

Q. Now, were you at Pier 96 or Pier 98 on Saturday morning?

A. Yes, I was.

Q. Would you tell His Honor what you saw at that time.

A. I arrived at Pier 98 shortly after 8 A. M. and there was a sizable group of men milling around the front gate. I would estimate—

Mr. Freedman: Mr. Muldoon, would you please keep your voice up just a little.

The Court: Just a little louder. You have a lot of competition from the fans, Mr. Muldoon.

The Witness: Thank you.

[fol. 71] The Court: And you are in a large room. If you talk too loud, I will stop you.

A. There was a sizable group of men at the entrance of Pier 98, South, some two—two hundred fifty men, I would estimate, and they were milling around, and as I drove through the gate, one of the men who worked for us stopped my car and informed me that these men were assigned to vessels at Pier 96, South, and the vessels were not working, and I continued on with my business.

We had a vessel working at the south side of Pier 98, South, and I visited that ship, and then went around to a ship on the north side of 98, South, which we were working,

and visited that vessel.

At about a quarter of 9, a boisterous group of men, in number I estimate about two hundred came down the north side of Pier 98, South, and knocked off our vessel there, the M/S "Horda."

They continued around to the south side of 98 and I'understand knocked off the SS "Monterey" that was working

there:

By Mr. Scanlan:

Q. How many gangs had been working on the first vessel that was knocked off at Pier 98?

A. The M/S "Horda" had five gangs working.
[fol.,72] Q. And how many gangs were working on the second vessel that was knocked off at Pier 98?

A. The SS "Monterey" had four gangs working.

Q. They were all twenty-two men in a gang?

A. Yes, sir.

Q. What happened after these two vessels were knocked off at your terminal?

A. I went to the office on the second floor of our pier and informed our uptown office of the proceedings.

I went back on board and advised the master of the M/S "Horda" of the situation as I understood it then and told him that I would get word back to him when I could define it more clearly and would know a little better what he could

expect insofar as resumption of work on his ship.

I returned to our pier office and made a few telephone calls and then went over to the main gate of the pier. There were still some men there, and I saw Mr. Askew, the president of 1291, and Mr. Moock, the International vice-president, and Mr. Talmadge, and I think Mr. Carter, the International vice-president, was there, and we discussed what was going on and what could be done to solve the work stoppage.

Mr. Askew said that he was going into the restaurant and talk to the men and I followed in shortly thereafter, and he was addressing the men and I also spoke to some [fol. 73] of the men in there and we discussed the stoppage.

Q. Did you have any conversations with any of the men at that time?

A. Yes, I spoke to many of the longshoremen there. Some were under the impression that there was no signed contract at this time and therefore gave me the impression that this thing was still open for some further negotiation.

I explained to them that we did have a signed contract and further that it had been supplemented by an arbitrator's award which they didn't seem to be very familiar with, and I attempted to explain it to the best of my ability.

I pointed out that if we didn't have a signed contract, the arbitrator would not have been able to make an award because the provision in question, that is, Section 10, Subparagraph 6 of our new agreement, which is the clause which relates to the setback provision, is new in the present agreement and had the arbitrator only had the old agreement to rely on, then he couldn't have made a decision on the setback privilege based on 10-6.

Mr. Askew suggested that we get together in Mr. Corry's office at noon, and I agreed to meet him there at that time,

and I had one of my men phone Mr. Corry and suggest that he contact Mr. Sobelman and that we would meet with the union at 12 noon in the PMT offices.

[fol. 74] Q. Did you meet with the union at that time?

A. Yes, sir.

Q. What transpired at that meeting?

A. Mr. Askew opened the meeting and made a lengthy

statement. He said that I had suggested a meeting.

Actually I thought it was the other way around, but I didn't belabor the point because I thought it was incumbent on both of us to do whatever we could to live this problem.

At that time he stated quite clearly that he deplored the actions of the men in not working the vessels involved, and he had no sympathy at all with the further actions of the men in doing what they did to our own vessels and, of course, every other vessel in the port that was visited by these longshoremen who forced the other men to abandon their work.

Some of the representatives of the ILA who were present at that meeting suggested that the problem could be solved by amending the present 10-6, and we said that under no circumstances were we there to renegotiate the contract and, in fact, we refused to renegotiate the contract, the contract was binding on both parties for the duration, and that we would stand on that point.

Mr. Askew agreed that they had an award which he didn't [fol. 75] think very much of, was binding on them, and they intended to live by it, and further that he and his associates would do all possible in going down to the hiring center the following morning and getting these men to go back to work in accordance with our contract.

I would say that was about the substance of the meeting.

Q. Now, after this meeting was over did you participate in drafting the telegram which has been marked P-1 and which was forwarded to the union?

A. Yes, after we left the union, we met further in Mr. Corry's office, and I suggested that we send such a message to the union confirming what had been discussed in that meeting.

Mr. Sobelman and Mr. Corey and I got together and

worked up the phraseology that was used.

Q. And to the best of your knowledge does the contents of that telegram confirm the understanding that was reached at that meeting?

A. Yes, sir.

Q. Now, were you at the piers at all on Sunday morning?

A. No, sir.

Q. Do you know whether or not the vessel that has been testified to by Mr. Corry that was worked by Mr. Tobin's company, the vessel that was at Pier 96, do you know [fol. 76] whether that was worked on Sunday morning?

A. No, it was my understanding that that ship sailed

on Saturday.

Q. How about the vessel that was stevedored by Murphy-Cook & Company?

A. Yes, I know that that vessel did not work; it was

there on Sunday.

Q. And it did not work?

A. Yes.

Q. Now, were you at the piers on Monday morning, yesterday?

A. Yes, sir.

Q. And what did you see?

A. Well, there was a larger group milling around the main gate when I arrived there at what I judge would be about 8:15 and—

The Court: A larger group than what?

. The Witness: Than on the Saturday work stoppage, and I drove in and discussed with Mr. Corry and some of the other members there the problem that we faced.

I was informed that none of the vessels in the terminal were working and was given to understand further that none of the ships throughout the port were working.

By Mr. Scanlan:

Q. Did you see any of the officials of the defendant union

[fol. 77] on Monday morning?

A. I think that Mr. Johnson was there on Monday morning, and I am not sure. I think I also saw Mr. Moock there. I did not have any direct contact with them. I think Mr. Carter may have been there also.

Q. Now, were you at the piers today?

A. Yes, sir.

Q. What did you see today?

A. A similar situation, a large number of men milling about the main gate of Pier 98, South, and, of course, learned upon arrival that no vessels were again working today and that the situation was similar to yesterday throughout the port.

Q. Did you see any of the officials of the defendant union

at your pier today?

A. I know that I saw Mr. Moock there today. I had no direct contact with him, and I don't recall seeing any of the other officials.

Oh, yes, excuse me, as I—shortly after I drove in, a car drove out in which I recognized Mr. Askew, and I couldn't tell who was with him, but there appeared to be two or three other officials in the car with him.

Mr. Scanlan: Cross-examine.

[fol. 78] Cross-examination.

By Mr. Freedman:

Q. I take it, Mr. Muldoon, that you have been on the waterfront quite frequently since this problem arose on Friday; is that right?

A. I was there on Saturday, I was not there on Sunday, I was there on Monday, and I was there this morning.

Q. Were you there on Friday?

A. Earlier in the morning when I didn't know the problem existed. Q. Were you present at any of the times when any of the union officials addressed the men in an effort to get them back to work?

A. At any time that I saw union officials at Pier 98, they were talking to small groups of men, and what they said couldn't be heard above the noise of the crowd.

Q. But did they attempt to conceal what they were say-

ing!

A. I made no effort to find out about it.

Q. But they didn't attempt to conceal what they were saying, did they?

A. I wouldn't know whether they did or not, sir.

Q. How far away were you standing?

A. Possibly from here to you, sometimes further, of course.

Q. Did you attempt to talk to any of the other men other [fol. 79] than those few that you talked to originally to find out why they weren't working?

A. I would say that each day I talked to some of the

men, yes.

Q. And, now, when was the last time you talked to them?

A. This morning.

Q. And to whom did you talk then?

A. I am not sure who they were, sir.

Q. Where did.you talk to them?

A. At Pier 98, South.

Q. Do you know whose men they were? Were they your men?

A. No, they were not my men, sir.

Q. Do you know whose men they were?

A. No, I do not.

Q. Did they give you any reason for staying out?

A. No, they said that they didn't know why they were out.

Q. Who said this, now?

A. The longshoremen.

Q. You have been on this waterfront how long?

A. Since 1947.

Q. And you are pretty familiar with virtually all of the longshoremen on the waterfront, if not by name at least

you can identify most of them, can't you?

A. Mr. Freedman, on Saturday morning, I saw two hun-[fol. 80] dred men come down the north side of 98. It took them a minute and a half to knock off the "Horda," and I couldn't tell you one of them.

Q. Mr. Muldoon, you served on many of the panels like Pension and Welfare and some of the others having to do with the various remedies and benefits which are given to the men, and you have to identify these men, do you not?

A. I don't serve on the Pension or Welfare Trustees'

Group, I suppose you mean.

Q. But don't you serve on any of the panels?

A. No, sir.

Q. How about the panels which have to do with identifying the men for the court and so on?

A. I don't know what panels they are. I don't serve on

them, whatever they are.

Q. And you say that you are not familiar with the vast majority of the men on the waterfront, even though you have been there since 1946?

A. I would say that, sir, yes-1947.

Q. You did talk to Mr. Askew on one occasion, did you not?

A. Yes, on Saturday morning.

Q. Now, at that time you heard him address a group of longshoremen?

A. Yes, in the restaurant.

[fol. 81] Q. Did you hear what he said?

A. Yes.

Q. What did he say?

A. He urged the men to return to work, that we had a contract and they should abide by it. We had an arbitration award, even though it was not fair from his viewpoint; it was binding.

Q. Did he sound like he meant it?

A. Yes, he sounded very sincere.

Q. As a matter of fact, if I may refresh your recollection, Mr. Muldoon, was it not you who suggested to Mr. Askew that you have a meeting after you heard him address the men on one occasion?

A. No, we agreed to have the meeting. I only heard him address the men on the one occasion, and we agreed to have the meeting actually as he was going into the restaurant.

Q. Well, wasn't it you who suggested the meeting?

A. Well, he said it was; I say it was him.

Q. He has already told you you said it, I take it, from what you said now?

A. Yes, in his opening statement in our meeting Saturday afternoon, he opened by saying I suggested the meeting. I didn't feel that it was an important point:

Q. Except for the fact that you were impressed by what [fol. 82] Mr. Askew was saying to the men and you wanted to have a meeting with him?

A. You are saying that; I am not.

Q. Sir?

A. You are saying that; I am not.

Q. Well, is it untrue?

A. As I said earlier, I asked—and Mr. Askew and Mr. Carter and Mr. Talmadge and perhaps Mr. Moock was there, and I am not sure—we were discussing what could be done about this, and it was at that time I say that Mr. Askew said that he felt it in the best interest that we get together as soon as possible in Corry's office. I took it from that that he was asking for a meeting.

Q. On how many other occasions would you say you

heard any of the union agents address the men?

A. As I said, I couldn't hear them on any other occasion.

Q. Well, on how many other occasions did you ever see any of the union officials address the men?

A. I was at the waterfront on Saturday and we have discussed that. I saw and heard Mr. Askew in the restaurant on Saturday morning.

On Monday morning, Mr. Moock, I believe, was with a small group of men-

The Court: What do you mean by "small"?

[fol. 83]. The Witness: Possibly less than twenty—and I was from here to you away, and it was in a conversation tone. I did not hear what was said nor did I attempt to hear what was said.

By Mr. Freedman:

Q. Well, what I am asking you now is, on how many other occasions did you see any of the union officials address the men?

A. What do you mean by, that?

Q. Well, you said that on one occasion you saw a union agent, a union official, speaking to some of the men, but you were a little too far away to hear it.

Isn't this what you said?

A. Yes, I just said that on Monday morning.

Q. Yes. Is that the only occasion when you saw any of the union officials address the men since Friday?

A. No, this morning Mr. Moock was again there with a small group of men, again less than twenty, speaking with them, if that is addressing them.

Q. Did you ever see Johnny Smith address any of the

men?

A. No, sir, I don't recall seeing Mr. Smith at the pier.

Q. How about Paul Johnson?

A. I think I saw Mr. Johnson there one day.

Q. Where was this?

A. At Pier 98, South.

[fol. 84] Q. Did you hear what he said at all?

A. No, I did not, sir.

Q. How far away were you?.

A. Maybe the width of this courtroom.

Q. Did you try to get any closer to hear what he was saying?

A. No, sir.

Q. Weren't you interested?

A. I thought that if he was addressing the crowd, I could hear him from where I was.

Q. Did he try to conceal what he was saying?

A. Oh, I don't know, sir.

Q. What about Eddie Devine, did you hear him address any of the men?

A. I don't recall seeing Mr. Devine there.

Q. What about Alex Talmadge?

A. No, I did not hear Mr. Talmadge address any of the men.

Q. Did you see Mr. Talmadge or any of the others-

A. Yes, I had a discussion with Mr. Talmadge in Mr. Askew's presence on Saturday morning.

Q. I mentioned all of the agents, did I not?

A. Pardon me, sir?

Q. I think I mentioned all of the other agents?

A. I don't know whether you did,

Q. Was there any you saw addressing the men? Mr. Cane?

[fol. 85] A. Not that I recall.

Q. And on that one occasion you didn't see Mr. Moock address any of the men, either?

A. As I said earlier, he was talking to some of the men,

this morning he was talking to a group of men.

Q. I say except—other than on that one occasion—you didn't see Mr. Moock address any of the men?

A. Not that I recall.

Mr. Freedman: That's all:

The Court: Any other questions?

Mr. Scanlan: No redirect, sir.

The Court: The witness may step down. Thank you, sir.

The Witness: Thank your Mr. Scanlan: Mr. Sobelman.

STEWART SOBELMAN, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Scanlan:

- Q. Mr. Sobelman, what position do you hold in the plaintiff association, the Philadelphia Marine Trade Association?
- A. I am vice-president of the Philadelphia Marine Trade [fol. 86] Association.
- Q. Are you also a member of the Philadelphia Marine Trade Association?
 - A. My company is a member, yes.
 - Q. What is the name of your company?
 - A. B. H. Sobelman & Company, Incorporated.
 - Q. And what type-

The Court: What is it?

By Mr. Scanlan:

Q. What type of work do you do?

The Witness: B. H. Sobelman & Company, Incorporated.

By Mr. Scanlan:

Q. What type of work does your company do?

A. The firm attends to steamship agencies, stevedoring, clerking and checking.

Q. And what position do you hold in that company?

A. President.

- Q. Now, Mr. Sobelman, did you attend the meeting on Saturday at noontime, around noontime, in Mr. Corry's office?
 - A. Yes, I did.

Q. And who was present at that meeting?

A. Representing the Philadelphia Marine Trade were Mr. Corry, Mr. Muldoon and myself.

[fol. 87] Representing the local, 1291, were Mr. Askew, the four agents, Messrs. Johnson, Smith, Talmadge, and Devine, Mr. Huggins and Mr. Cane were present, Mr. Moock and Mr. Carter were also present.

Q. Now, Mr. Sobelman, you have heard Mr. Corry and Mr. Muldoon testify regarding what transpired at that

meeting, have you not?

A. Yes, I have.

Q. Do you corroborate their testimony?

Mr. Freedman: Objection.

The Court: What is the objection?

Mr. Freedman: Sir?

The Court: What is your objection?

"Mr. Freedman: That is not the proper way to prove it.

The Court: Sustained.

By Mr. Scanlan:

Q. Mr. Sobelman, will you please tell us, then, in your

own words what transpired at that meeting.

A. The meeting started with Mr. Askew reviewing the situation, referred to the fact that it was deplorable that longshoremen were walking off ships over a dispute, and even more, that they were riding up and down the riverfront knocking off other ships that were not involved in [fol. 88] the dispute at all, indicated at that time that he felt that the arbitrator's award covered the situation, but that it was a deplorable decision, and that he would hope that some change could be made in that decision.

He was advised by Mr. Muldoon who was acting as the spokesman for the PMTA at the time that that was not possible, and that the setback provision was a condition that resulted from hard negotiation a year ago, it was set, out in the settlement agreement last February, had been sustained by the arbitrator's award, was now before-excuse me, had been sustained by a court ruling-and further mentioned that this particular court ruling was in fact, we understood, being appealed by the ILA.

If my memory serves me, it seems that the merit of the setback was discussed at short length and it was pointed out again by the—I believe Mr. Muldoon was speaking—that this provision is necessary for a port like Philadelphia, and I am trying to recall all the conversations that took place, and it is very difficult to remember each and every one.

It seems to me there were some comments from some of the other representatives present, but I can't identify them. My understanding of their comments was that they all recognized that the arbitrator's award applied in this particular matter, and when the meeting adjourned, the comments—

[fol. 89] Mr. Freedman: I move to strike that last statement, Your Honor.

The Court: I didn't get it.

Mr. Freedman: Sir?

The Court: He let his voice drop. I didn't get the gentleman's last statement.

Mr. Freedman: The last part was where he said he couldn't identify who they were, who made this statement.

The Court: It may be stricken.

By Mr. Scanlan:

Q. Mr. Sobelman, would you continue, please.

A. At the conclusion of the meeting—I am not quite sure how to respond now, in view of the objection.

Q. Just tell us what-

The Court: 'He didn't object.

Mr. Freedman: I withdraw my objection.

The Court: What?

Mr. Freedman: I withdraw my objection, my motion.

The Court: He withdraws his objection.

Go ahead.

A. At the conclusion of the meeting, the members that were representing 1291—and I have enumerated—I sup-

pose ten or eleven, together with those of us representing-[fol. 90] the PMTA, stood up, and under these conditions, as I believe everyone who has participated in such a meeting is familiar, there is a lot of exchange back and forth, and the comment was made, as I understood it, that there was nothing further that could be resolved with the PMTA, that the union officials would go down and talk to the men and try to get them to go back to work.

That was my understanding at the conclusion of the

meeting.

Q. Now, after this meeting ended, did you participate in the drafting of the telegram which has been identified as P-1 which was sent to the union?

A. Yes, I did.

Q. And does that telegram as far as you are concerned confirm the understanding that was reached at that meeting?

A. Very definitely.

Mr. Scanlan: Cross-examine.

Cross-examination.

By Mr. Freedman:

Q. Was there any statement made at the meeting, Mr. Sobelman, as to the cause of the work stoppage?

A. Yes, it was stated that the work stoppage concerned

the setback provisions.

Q. And was there any statement made about who was

responsible for it?

[fol. 91] A. I don't—I am not clear how I can properly respond to your question, Mr. Freedman. Could you rephrase it, please?

Q. In other words, you had a discussion about this work stoppage. Didn't the discussion cover who was respon-

sible, who caused it, in the first instance?

A. Well, the understanding I had was that the gangs involved themselves, walked off the ship, or, rather, refused to turn to at 1 o'clock.

Q. As a matter of fact, weren't the officials of the employer association, the Philadelphia Marine Trade Association, complimentary to the union officials for their efforts in attempting to get the men back to work?

A. At that time, Mr. Freedman, I don't think it can be said that there were substantial efforts to have the men

return to work. I don't believe-

Q. I asked you about a specific question. I will get to that in a moment. I asked you whether that came up during that meeting:

Mr. Scanlan: I don't believe that was his question. The Court: What was the question? Repeat the question, Mr. Reporter.

(The question was read.)

[fol. 92] Q. I asked you about a specific question, Mr. Sobelman. I will get to that in a moment. I asked you whether that came up in that specific meeting.

Mr. Scanlan: I don't think that was the question.

The Court: No, that wasn't the question. Repeat the question, Mr. Reporter.

(The question was read.)

The Court: If you want to withdraw the question— Mr. Freedman: I am talking about at this meeting, this meeting he was talking about.

. The Court: Do you want to withdraw the question?

Mr. Freedman: No, I will let it stand,

The Witness: We were complimentary to the representatives of the union because of their concern about what this work stoppage was doing to the Port of Philadelphia.

Mr. Freedman: Will you read that answer back to me, please?

(The answer was read.)

By Mr. Freedman:

Q. Have you been along the waterfront and seen any occasions when the union officials might have been addressing the men?

A. At what time are you referring to, sir?

Q. At any time from the time it started on Friday until [fol. 93] the present time?

A. I was on the waterfront this morning, yes.

Q. Have you been on the waterfront before this morning?

A. Are you referring to the period since Friday?

Q. Since this started on Friday.

A. No, this morning was my first time on the riverfront since that time.

Q. Where were you since Friday?

Mr. Scanlan: I object to that question, Your Honor.

The Court: Sustained. It doesn't make any difference where he was. Was he at the waterfront, yes or no? He says no. Suppose he is down in Bermuda or up in Nantucket, does it make any difference?

Mr. Freedman; I think it is important where he might have been since Friday, if he was involved in business. If it was pleasure, I have no interest in it. If it was business, I think it is important.

The Court: All right, were you on business or pleasure

since Friday?

The Witness: Well, some of both, sir. I will relate my activities since Friday, if—

The Court: No.

[fol. 94] By Mr. Freedman:

Q. All I want to know is where you are.

The Court: You relate them.

Mr. Freedman: Does Your Honor want him to relate his activities? I just want to know where he was.

The Court: You have already said I have been sort of prejudiced against you, so—

Mr. Freedman: I didn't say that, Your Honor.

The Court: Yes, you did. Go ahead, Mr. Witness.

The Witness: During Friday I was in my office.

Mr. Freedman: Your Honor, I take exception to Your Honor's remarks.

The Court: You may take exception. You said you are not successful in getting some of your rulings across and therefore so and so and so and so.

Mr. Freedman: Your Honor said I was-

The Court: Answer the question, please. I have said all I intend to say, Mr. Freedman. You are a very nice fellow, very active for your clients, and doing a good job. I don't agree with everything you have said legally. Otherwise we are all right. Socially we are good friends. Go ahead.

The Witness: Friday I was in my office which is located in the Bourse Building. Saturday I intended to remain [fol. 95] at my home. However, I received word that one of the ships for which we were acting as agents had been knocked off and I decided to proceed to the Bourse Building.

Upon arriving there, I went to the office of the Philadelphia Marine Trade Association. This was about 11:00 a.m. I then participated in the meeting that was referred to. On Sunday I was at home. On Monday I was in my office. Does that answer your question, sir?

By Mr. Freedman:

Q. So actually the only contact you had with what was going on on the waterfront was this morning?

A. The only time that I, personally, was down on the

riverfront during this period was this morning, yes.

Q. Now, did you hear anyone addressing, any union official addressing any of the men down there this morning when you were there?

A. No.

Q. Where were you?

A. At the gate of Pier 98.

- Q. Did you see any union officials around?
- A: Yes.
- Q. Who did you see?
- A. I saw Mr. Askew.
- Q: Did you talk to him?

[fol. 96] A. No.

- Q. Was he talking to any of the men?
- A. Yes.
- Q. Did you hear what he was saying?
- O. No.
- Q. How far away were you?
- A. Perhaps ten feet.
- Q. And you couldn't hear what he was saying?
- A. No.
- Q. Who else did you see down there?

The Court: How many members was he talking to?
The Witness: To the best of my recollection, at that time
it was three or four men gathered around him.

By Mr. Freedman:

- Q. Were there other huddles of men around in addition to these three or four men who were immediately in his presence?
 - A. There were other men down at the gate, yes.
- Q. Well, who could have heard what he was talking about?
 - A. In my judgment, no.
 - Q. Did he go from place to place while you were there?
- A. Mr. Freedman, I didn't remain in one place and specifically watch everything that Mr. Askew did, so I can't answer that.
 - Q. Who else did you see down there this morning?
 - A. I saw Mr. Kane.
- [fol. 97] Q. Which Mr. Kane?
- A. Mr. Joseph Kane.
 - Q. The secretary-treasurer?
 - A. Sirt

Q. The secretary-treasurer?

A. Mr. Joseph Kane.

Q. Did you talk to him?

A. I may have said good morning, nothing beyond that.

Q. Did you talk to him about the work stoppage?

A. No, sir, he handed me a copy of the pamphlet that was being handed out down there.

Q. That is R-1, the one that has been marked R-1?

A. I am not familiar with the identification.

Q. Is this it right here? Let the record show that I handed the witness R-1.

A. Yes, sir.

Q. He handed that to you. Was he handing this pamphlet out to others?

A. Yes, sir.

Q. Did you observe him talking to any of the longshoremen down there?

A. I did not specifically observe him speaking with people.

Q. He just handed them the pamphlets?

A. During the moments that I was watching him, yes. [fol. 98] Q. Anybody else that you saw down there, any other union official?

A. I saw Mr. Moock down there and Mr. Carter.

Q. Let's take them one by one. Did you speak to Mr. Moock?

A. If I may generalize, I had no extended conversation with any of the union officials that I saw there. I may have said good morning, and if you will accept that, I will leave it.

Q. You didn't talk about the work stoppage at all with them?

A. No, sir, I did not.

Q. Did you observe Mr. Moock talking to any of the men?

A. It seems to me that I did, yes.

Q: And did you hear what he said?

A. No, sir.

Q. How far away were you from him?

A. Perhaps about the same distance as I previously indicated, ten to fifteen feet.

Q. And you couldn't hear what he was saying?

A. No, sir.

Q. How many men were in the group at the time you saw him talking to some men?

A. To the best of my recollection 3, 4, 5, 6, something

like that.

- Q. Did you observe him while you were there? By the way, how long were you down there?

 [fol. 99] A. I was there from 7:45 until 8:40.
 - Q. Approximately an hour?

A. Approximately an hour.

- Q. And during this period of time did you observe him moving from place to place in that area, talking to different men?
- A. Mr. Freedman, again I can only say to you I did not make a detailed mental record of the specific activities of each man and I must qualify that I left the gate at Pier 98 for about twenty minutes from about 8:15 to 8:35, something like that, to visit on board a ship for which we were the agents there and explained to the captain that there would be no further work that day, today that is.

Q. Now, I think that Mr. Moock, for the record, has been identified as the International vice president. Now, I think

you said you also saw Mr. Carter there.

A. Yes, I did.

Q. He is the International vice president for the Atlantic Coast District, is he not?

A. Sir, I am not in a position to verify his title.

Q. For the record, I will make that identification. Then I will ask you whether you observed Mr. Carter talking to any of the men.

A. It seems to me that I did observe him talking to one or two men on the one occasion that I happened to see him. [fol. 100] Q. And are you able to state whether or not he moved from place to place in that area talking to different men?

- A. I am unable to answer that.
- Q. Could you hear what he said?

A. No, sir.

Q. How far away were you from him?

A. Perhaps ten feet.

Q. Ten feet. Was this all at the same time, you were ten feet away from all of these different union officials, and you couldn't hear any of them?

A. Approximately.

- Q. Who else did you see, what other union officials did you see down there?
 - A. It seems to me that I saw Mr. Johnson there.

Q. And how far away were you from him?

- A. Well, at the risk of being repetitive, I will say again about fifteen feet.
 - Q. All right, did you hear what he said?

A. No. sir.

Q. So how many people was he talking about?

A. To the best of my memory, three or four.

Q. And did you see him wandering around talking to different groups of people?

A. I can't say that I remember the specific movements of

[fol. 101] these individuals.

- Q. Who else did you see down there, that is the union officials?
 - A. I believe I have identified all of those that I saw.
- Q. Didn't you attempt to find out what these union officials were saying to the men?

A. No, sir.

Q. You didn't attempt to hear?

A. No, sir.

- Q. Did you discuss the matter with any of the men down there?
 - A. I spoke to several of the men, yes. .

Q. Who?

A. Anonymous longshoremen as far as I am concerned.

Q. They were who?

A. Anonymous longshoremen.

Q. Anonymous longshoremen?

A. Men there, presumably longshoremen to go to work on the ships and decided not to.

Q. Had you ever seen them before?

A. Sir?

Q. Had you ever seen them before?

A. Not to my knowledge.

Q. Sir?

A. Not to my knowledge.

[fol. 102] Q. How long have you been on this waterfront?

A. Since 1945.

Q. And you have never seen them before, these people?

A. I may have seen them but I cannot identify them as having seen them before.

Mr. Freedman: That is all. The Court: Mr. Scanlan.

Mr. Scanlan: No redirect examination, sir.

The Court: Any other witnesses?

Mr. Scanlan: No, sir, that completes our case, Your Honor.

Mr. Freedman: If the Court please, I move for a dismissal. There isn't a word of evidence to indicate that a single union official or the union started or encouraged this work stoppage. I move for a dismissal of this—whatever the proceeding may be.

The Court: Refused.

Mr. Freedman: Well, in order that I may direct myself at specific channels in which Your Honor might be interested, may I ask Your Honor what, particularly, you may consider to be evidence against the union in this case?

The Court: It is your case, sir. You may proceed, if you

-choose to, or not proceed.

Mr. Freedman: Mr. John Smith, will you take the stand, [fol. 103] please. I put this evidence on with the same understanding before, Your Honor, that I do not waive any of the defenses, nor do we waive the jury trial.

JOHN J. SMITH, SWOTN.

Direct examination.

By Mr. Freedman:

- Q. Mr. Smith, will you state what your position is in the union, please?
 - A. Business agent for Local 1291.
 - Q. International Longshoremen's Association?
 - A. Yes.
 - Q. For how long have you been on this waterfront?
 - A. Since 1941.
 - Q. And for how long have you been a business agent?
 - A. Since 1955.
- Q. Mr. Smith, were you present on Friday morning along the waterfront?
 - A. Yes, I was.
- Q. Will you tell us what you know about the onset of this particular problem that is now before the Court.

A. I first came in contact with this situation Friday

morning at the dispatching center.

Q. Where is that dispatching center?

[fol. 104] A. The dispatching center is under the Walt Whitman Bridge in South Philadelphia. I reported to work approximately around seven o'clock or a little after seven, I would say, and proceeded to start to dispatch the men who were going to various jobs in the Port. Everything was going along smoothly until sometime before eight o'clock when a group of men that I knew were associated with Murphy Cook came into the dispatching center and told me of the situation, of what happened to them.

I asked them what happened. They told me that Wednesday, the 23rd, they were hired for Thursday, for one o'clock on a ship at Pier 96. They reported to work Thursday at one o'clock, and due to the inclement weather, they did not

turn to but they were paid four hours.

They then were instructed by the employer to report back to the job the next morning, shipside orders. The next day, Friday, the 25th, the men reported to Pier 96. They were then told at that time that they were pushed back to one o'clock.

Q. What time was that?

A. That was sometime before eight o'clock.

Q. Well, can you give us something more specific? Can you give us a little more specific time?

A. I would say sometime before eight, ten of eight, five of eight, roughly around that time, quarter of eight.

[fol. 105] Q. All right.

A. I told them that we had a situation in the Court now, as far as an appeal was concerned, but I thought, my opinion, that this situation was altogether different, due to this reason: This was a situation where the men were on the ship the day before and they had shipside orders to report back, and I said I was going to contact the man to try to get the men to go to work and institute some kind of a grievance, because in my opinion—and I have been a business agent for ten years or better—every situation on the waterfront pertaining to a ship is altogether different every time. It is not like working in a factory or any place else.

We work steady. The ship, itself, constitutes new problems every day. I knew about the situation in the Court of Appeals, but I knew that pertained to another situation, as far as I was concerned, and I told the men that I thought they had a good beef, but I told them to leave us work it out and leave it in our hands but go back to work and leave us handle it.

All they did was proceed to grumble and walk out the door. The next thing I knew, after one o'clock, the situation arose where the men didn't turn to.

Q. What happened after that that you know of?

A. Well, just the situation actually erupted after that. [fol. 106] Q. Let me be more specific. Mr. Smith, have you from time to time addressed various groups of men and urged them to go back to work?

A. Ever since we have been on this situation I have.

Q. And how frequently has that been?

A. That has been Saturday, Sunday, Monday, and Tuesday.

Q. That includes this morning?

A. This morning, too.

Q. What about Friday?

A. Well, Friday I was not there Friday afternoon. Friday afternoon I was not there.

Q. Have you seen any of the other union officials addressing the various men at different places?

A. Yes, sir.

Q. Were you able to hear what they were saying?

A. Yes, sir, I heard Mr. Askew speak and tell the men to go back to work and leave us settle this out for you, the right way, through the contract. That was said by Mr. Talmadge, Mr. Devine, myself, Mr. Johnson, Mr. Kane. I heard them all say this, because I was walking all around myself.

[fol. 107] By Mr. Freedman:

Q. Will you finish with your answer, Mr. Smith?

A. Could I have that read?

(The question and answer were read.)

By Mr. Freedman:

Q. Did the union officials themselves have any understanding that they would do these things, urge the men to go back to work?

Mr. Scanlan: Objection.

[fol. 108] The Court: Sustained.

By Mr. Freedman:

Q. Did the union officials have any understanding with respect to this work stoppage, about going back to work?

Mr. Scanlan: Objection. The Court: Sustained. Mr. Freedman: May I ask on what grounds?

The Court: Only what he knows.

Mr. Freedman: That is what I am asking.

The Court: No, you didn't ask that.

By Mr. Freedman:

Q. Mr. Smith, did you attend any sessions or meetings with other officials of the union?

A. Yes, I did; as far as getting the men back to work?

Q. Yes.

A. Yes.

Q. And since when?

A. Ever since the inception of the situation.

Q. And did you have various meetings every day?

A. Every day.

Q. And what was the nature of the discussion?

A. To get the men back to work and let it go through the proper channels to be settled. We kept on laboring that to the men, telling them to do that.

[fol. 109] Q. By proper channels, what did you mean?

A. For a grievance procedure that we have in the contract.

Q. Under the contract?

A. Yes.

Q. By the way, after the men came to you in the first instance, I think you said on Friday, is that correct?

A. Yes.

Q. You then went to Mr. Smith of the Murphy Cook

Company?

A. Oh, yes. I forgot to mention that. To try to rectify the matter I thought anyhow, I went to the next building which is where the employers are housed there, and I met Mr. Vincent Smith, who is the superintendent for Murphy Cook Company, and I asked Vince if he could do anything about getting the men to go to work at eight o'clock in the morning, because that day there was approximately 70 gangs that were working, and I know of 12 gangs that were pushed back to one o'clock, including Murphy's gang.

The reason I went in there, because the weather was actually breaking. It was starting to be a beautiful day, and due to the fact that at Pier 98 there were other ships that were working for other companies. That is what I tried to do. I went over and talked to him. He called somebody on the phone whom I don't know.

Q. What did you say to him and what did he say to you? [fol.110] A. I asked Vince if he could get somebody to reconsider the order so these men would go to work this morning. He said he would see what he could do. He

then proceeded to make a phone call.

Q. Do you know who he talked to?

A. I don't know. It might have been Mr. Monroe. I am not sure.

Mr. Scanlan: I object, sir. The Court: Sustained.

Mr. Scanlan: I object, sir, and ask that it be stricken.

The Court: It may be stricken.

By Mr. Freedman:

Q. Did he express any opinion with respect to the merits of the work stoppage?

A. No, he didn't say anything. Vincent didn't say anything, only that he would like to get the ship working himself, that he would like to be working.

Q. And did he make an effort to get the men back with

his own people?

Mr. Scanlan; Objection.

The Court: Better rephrase that question. Mr. Freedman: All right, I will withdraw it.

[fol. 111] By Mr. Freedman:

Q. After he talked to whoever it was, what did he say to you?

A. He said to whoever he was talking to, "No, the men are still pushed back to one o'clock, and that is it."

Mr. Freedman: That is all.

The Court: Mr. Scanlan, cross.

Mr. Scanlan: Yes, sir.

Cross examination.

By Mr. Scanlan:

Q. Now, Mr. Smith, I think you testified that the men who came in to see you on Friday morning and claimed that they were set back until one o'clock, that you told them that they had a good beef, is that correct?

A. In my opinion I thought the beef was different than

the first beef.

Q. But you did tell these men, did you not, that they had a good beef?

A. Yes, I did.

Q. Now, Mr. Smith, you are familiar with the contract between the PMTA and the ILA, 1291, are you not?

A. Yes, sir.

Q. And you are familiar with Section 10 (6) of the contract, are you not?

A. Yes, sit, when I see it, yes. Offhand it is a really [fol. 112] complicated affair, I will tell you that. You have to read it for awhile.

Q. Well, you have expressed your opinion now as an expert here. Are you familiar with Section 10 (6) of the contract or not?

Mr. Freedman: If the Court please, I object to that. That is utterly uncalled for.

The Court: Object to what?

Mr. Freedman: That he expressed an opinion as an expert.

The Court: Oh, I won't consider that. He just expressed

an opinion.

Mr. Freedman: What he is doing now, Your Honor, is to open the door—

The Court: I won't consider that.

Mr. Freedman: —is to open the door to the whole merits of this arbitration. As far as I am concerned, I am willing to do it, but he is opening the door now, and I am saying to Your Honor I am going to open it wider.

The Court: No, I won't consider that. It is stricken from the record. He is not an expert. He said he was a

business agent for his union. That is all.

By Mr. Scanlan:

Q. Are you familiar with Section 10 (6) of the contract? [fol. 113] A. Yes. I believe it pertains to—

Mr. Freedman: This is what he is doing. He is opening the door.

The Court: I understand what he is doing. The Witness: It pertains to the pushback.

By Mr. Scanlan:

Q. That is the section that provides for the setback?

A. Yes.

Q. Isn't it true that section provides that gangs ordered for an eight a.m. start, Monday through Friday, can be set back at 7:30 a.m. on the day of work, to commence at one p.m., at which time a four-hour guarantee shall apply, a one-hour guarantee shall apply for the morning period, unless employed during the morning period?

The Court: Don't answer the question. Mr. Freedman has an objection.

Mr. Freedman: The contract speaks for itself. He is reading from the contract.

The Court: He asked if he is familiar with this section.

Mr. Freedman: No, he is asking if this is what the contract says. That is what he is asking. The contract speaks for itself. If he is asking an interpretation, I object to it. [fol. 114] The Court: If he is asking what?

Mr. Freedman: If he is asking for an interpretation.

The Court: No, he isn't asking for any interpretation. If he is, I will overrule him. He can't do that.

Mr. Freedman: That is what he has just done, Your Honor.

The Court: No, no, no.

Mr. Freedman: If he is asking just what the contract says, let him put it in evidence. I will agree to that.

The Court: The contract is in evidence.

Mr. Freedman: Then the contract speaks for itself.
The Court: It does, but he wants to know whether he knows about this section. The answer is yes or no.

By Mr. Scanlan:

Q. Do you know about that section, Mr. Smith?

A. Yes.

Q. There is no provision in that section that has any qualifications for shipside orders; isn't that correct?

Mr. Freedman: That is objected to, Your Honor. The Court: Sustained.

[fol. 115] By Mr. Scanlan:

Q. Are you familiar with the arbitrator's award that was handed down in this case?

A. In this case?

Q. Yes.

A. No. The other case I am familiar with. This situation, no. In the other situation, yes.

Q. Are you familiar with the arbitrator's award of Mr. Weiss that was entered on June 11, 1965?

A. Yes, sir.

Q. Did Mr. Weiss rule at that time that the employer's right to set back the gangs was without qualification?

Mr. Freedman: Again Your Honor, whatever Mr. Weiss ruled is on paper. It is in evidence. It speaks for itself. The Court: Sustained.

The only thing I am interested in is does he know about it, and he said yes.

By Mr. Scanlan:

Q. Do you know about that section-

The Court: He knows about the arbitrator's award.

By Mr. Scanlan:

Q. Do you know about that section of the arbitrator's award?

[fol. 116] Mr. Freedman: He has already said he knows about the arbitrator's award. I think that covers it.

The Court: That covers it.

By Mr. Scanlan:

Q. Well, Mr. Smith, since you know about that section of the arbitrator's award, you nevertheless told these men that they had a good beef; is that correct?

Mr. Freedman: Objection.

Mr. Scanlan: This is cross examination, Your Honor. The Court: If you will leave out those few words, "knowing about the arbitrator's award," then I will allow it.

Mr. Scanlan: I will modify the question.

The Court: Then I will allow it.

By Mr. Scanlan:

Q. Will you answer the question?

A. Repeat the question, please.

The Court: Repeat the question, please.

By Mr. Scanlan:

Q. You told the men who came to see you on Friday that they had a good beef; is that correct?

Mr. Freedman: He has already said that three times, Your Honor. He testified to it on direct examination. [fol. 117] I want to make this statement: I object, Your Honor, to Mr. Scanlan taking the one statement out of context. He said in addition to that there is a proper way to settle it. It is a good beef. There is a proper way to settle it. I object to Mr. Scanlan's taking one sentence out of context.

The Court: All right, I think the Court understands that. Don't repeat that. Just ask the question you have in mind.

By Mr. Scanlan:

Q. Have you answered the question, Mr. Smith?

The Court: No, he hasn't. He was interrupted.

The Witness: Would you repeat the question again, please?

The Court: You don't have any question. So you can't answer anything.

Go ahead.

By Mr. Scanlan:

Q. Mr. Smith, you said that you also urged the men to go back to work, is that correct?

A. Yes, sir.

Q. Now, where were you on Friday afternoon at one o'clock?

A. I was not there. I had a problem, a domestic problem.

Q. One o'clock was the time that these men were supposed to report who were set back; isn't that correct?

[fol. 118] A. Yes, sir.

Q. And these were the men that you told they had a good beef; is that right?

Mr. Freedman: I object to that, Your Honor.

The Court: That is right; sustained. At one p.m. he was not there with the men. That is all we need to know.

By Mr. Scanlan:

Q. You were not at the job site then at one o'clock on Friday afternoon when these men who were set back were supposed to report to work?

A. That is right. I also know there were other repre-

sentatives that were there.

Q. I am not asking you that, Mr. Smith. Just answer my question.

Mr. Freedman: You did ask him that. He gave a direct answer, Your Honor.

By Mr. Scanlan:

- Q. Now, Mr. Smith, where were you on Saturday morning?
 - A. I was there.

Q. Where were you?

A. I was at the hiring center and at Pier 98.

Q. What time were you at the hiring center?

A. I got there a little after eight o'clock, 8:30, I would [fol. 119] imagine it was, or quarter of nine.

Q. Is that the regular time that you appear at the hiring center?

A. No, sir.

Q. What is your regular time for appearing at the hiring center?

A. Approximately seven o'clock.

Q. Was there any reason why you weren't there on Saturday morning at seven o'clock?

A. Yes, sir.

Q. What was the reason?

A. I was out celebrating the night before.

Q. Now, did you stay at the hiring center on Saturday?

A. No, we got together with the other officials, and I think that is when we went up and had the meeting at twelve

o'clock with you people. Well, you weren't there.

Q. Did you go directly from the hiring center to Mr. Corry's office?

A. No, I think we stopped and got some coffee.

Q. But you didn't visit any of the piers; is that correct?

A. Yes, I did. I rode down from Delaware Avenue. I saw men knocking off at Pier 38 and all along the piers.

Q. You saw that on Saturday, as you came up to Mr. Corry's office?

[fol. 120] A. Yes, as I was riding down, yes.

Q. Now, where were you on Sunday morning, Mr. Smith?

A. I was at the hiring center and at the pier.

Q. What time did you arrive at the hiring center?

A. Five after seven.

Q. And how long did you stay there?

A. I stood there till approximately, I would say, ten of nine, nine o'clock.

Q. How many men were at the hiring center?

A. There was a pretty good number of men.

Q. What is your best estimate?

A. I would say there was approximately three hundred to 350 men there; three hundred men I would say at the hiring center.

Q. This is on Sunday morning?

A. Yes.

Q. Now, did you speak to the men on Sunday?

A. Yes, I did.

Q. What did you say to them?

A. I told the men to go to work.

[fol. 121] Q. What did the men say to you?

A. They didn't say nothing. They just—milling around, just kept among one another.

Q. Did you visit any of the piers on Sunday?

A. Just a ride up and down the piers, that's all.

Q. And who was with you at the hiring center on Sunday?

A. All the officials, as far as I can recollect.

Q. All of the officials of 1291?

A. Yes.

Q. Now, were you at the hiring center on Monday?

A. Yes, sir.

Q. What time did you appear there?

A. A little bit after 7 o'clock.

Q. And how long did you stay there?

A. Stood there till about, well, prior-right before 8 o'clock.

· Q. How many men were at the hiring center at that time?

A. Well, there was plenty of men outside there then, plenty.

Q. Could you give us your best estimate?

A. Six hundred, seven hundred men, six hundred men, anyhow, a lot of men out there.

Q. Did you speak to any of those men?

A. Yes, sir.

Q. How did you speak to them?

[fol. 122] A. Went outside and talked to them.

Q. How many men did you talk to?

The Courf: Just a moment, now, Mr. Scanlan.

A. Well, groups.

The Court: Now, Mr. Scanlan; will you move over?

By Mr. Scanlan:

Q. Mr. Smith, as I understand it, before I stopped the last question, you were testifying about Monday.

A. Yes, sir.

Q. At the hiring center?

A. Yes, sir.

[fol. 123] By Mr. Scanlan:

Q. I believe you testified, Mr. Smith, you were at the hiring center on Monday?

A. Yes, sir.

Q. There were approximately how many men present?

A. Six hundred men.

Q. Six hundred men?

A. Plenty of men. There was plenty of them.

Q. And you went outside the hiring center and you talked to groups of men?

A. Small groups.

Q. Now, how many men were in these groups?

A. Sometimes it was ten, sometimes it was six, and so on.

Q. Now, isn't it true that there is a microphone and a public address system at the hiring center?

A. Yes, sir.

Q. Did you use the microphone on Monday to talk to the men that were outside?

A No, I did not.

The Court: Ray, you will have to go out there and quiet the people down and get them out of the hallway. It is impossible for me to hear. It will be impossible for counsel to hear.

All right, Mr. Scanlan.

[fol. 124] By Mr. Scanlan:

Q. Now, how long did you stay at the hiring center on Monday?

A. I think it was right before 8 o'clock, I left Monday.

Q. And when you talked to these groups of men outside the hiring center, did you urge them to return to work?

A. They were only asking me what the situation was, and I was telling them, I told them to all go to work. In fact, we were dispatching men out there to go to work.

Q. And did you tell the men at the hiring center to go to

work?

A. Yes, I did. I didn't have to tell some of them because they were going to work regardless.

Q. I am just asking you whether you told the men in these groups outside the hiring center to return to work.

A. Yes, I did.

Q. Now, did you go to Pier 98 on Monday where the Murphy-Cook gang was and tell them to go to work?

A. Monday morning?

Q. Yes, sir.

- A. No, sira
- Q. You didn't tell the Murphy-Cook gangs to go to work?
- A. No, sir.
- Q. They were at Pier 98, isn't that right?
- [fol. 125] A. Yes, sir.
 - Q. How far away is Pier 98 from the hiring center?
 - A. I would say half a mile.
 - Q. You had a car at the hiring center, did you not?
 - A. Yes, sir.
- Q. And you could have gone to Pier 98 and talked to the Murphy-Cook men, too, if you wanted to; isn't that right?
 - A. Yes, sir.
 - Q. But you didn't do that, did you?
 - A. No, sir.
 - Q. Now, were you at the hiring center this morning?
 - A. Yes, sir.
 - Q. What time did you get there?
 - A. A little bit after 7 o'clock.
 - Q. How many men were at the hiring center at that time?
 - A. A couple hundred.
 - Q. Did you talk to any of these men?
 - A. It was about 6-the hiring center, you said?
 - Q. At the hiring center.
- A. Yes, we still was talking to the men about going towork.
- Q. Mr. Smith, I am talking about you personally, now. Did you talk to these men at the hiring center?
 - A. I talked to small groups of men, yes.
 - Q. Where did you talk to them?
- [fol. 126] A. At the hiring center.
 - Q. On the outside?
 - A. At the outside and on the inside.
- Q. Did you use the microphone to communicate with the men who were on the outside?
 - A. No, I did not.
- Q. What did you tell the men whom you talked to on the outside?

A. To go to work and leave us settle this through the contract.

Q. And you mentioned you talked to the men on the inside, that is, in the building?

A. A couple, a couple men there on the inside.

Q. What did you tell those men?

A. The same thing

Q. To go to work?

A. Yes, sir..

Q. Now, you didn't go to Pier 98, though, did you?

A. Today ! [

Q. Yes.

A. Yes, sir.

Q. Did you talk to the gangs that were working for Murphy-Cook?

A. We were talking to them. Yes, I did. I talked to a few [fol. 127] men who worked for Murphy-Cook.

Q. Well, where did you go when you went to Pier 98?

A. Right at Pier 98, at the gate of Pier 98 with the ship, the only ship that is left there is involved right now.

The others-

Q. Is that the ship that the Murphy-Cook gangs were working on or supposed to work on?

A. Yes, yes, sir.

Q. How many men were there?

A. There was a couple hundred men in that vicinity, I imagine. I don't know if they all belonged to Murphy-Cook.

Q. Did you talk to those men?

A. I tried to talk to as many men as I possibly could, yes.

Q. How many men did you talk to?

A. I would say twenty or thirty men, thirty-five men.

Q. Out of how many?

A. A couple hundred men was there.

Q. And did you tell those men to go to work?

A. Yes, sir.

Mr. Scanlan: That's all.

The Court: Mr. Freedman, any redirect?

If not, the next witness.

Mr. Freedman: I think that's all, sir.

I would like to recall Mr. Muldoon.

[fol. 128] The Witness: Thank you.

Mr. Freedman: For further cross-examination, sir.

The Court: Mr. Muldoon, please.

Francis Muldoon, resumed.

Cross examination (continued).

By Mr. Freedman:

Q. Mr. Muldoon, in discussing this matter during the past several days with one of the union officials, did you make the statement that Murphy-Cook made a mistake in calling this setback?

A. No, sir.

· Q. You did not?

A. No, sir.

Q. You are sure?

A. Yes, sir.

Q. That's all.

You realize you are still under oath, Mr. Muldoon? I say, you realize you are still under oath now?

A. Yes.

Mr. Scanlan: Lobject to that.

The Court: No, that's all right. "You realize you are [fol. 129] still under oath," is what he asked you.

The Witness: Oh, yes, yes.

Mr. Freedman: All right. That's all.

Mr. Askew.

RICHARD L. Askew, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Freedman:

Q. Mr. Askew, when did this matter first come to your attention?

First, let me ask you, you are president of Local 1291?

A. Yes.

Q. For how long have you been on this waterfront, Mr. Askew?

A. About twenty-four years.

Q. And for how long have you been an officer?

A. Sixteen years.

Q. And how long as president of the union?

A. Twelve years.

Q. Now, Mr. Askew, when did this matter first come to your attention?

A. Friday, last Friday.

[fol. 130] Q. Will you tell us from the time it first came to your attention what happened, what you did so far as this episode is concerned, to whom you spoke and what was said?

A. Well, Friday between 12 and 1 o'clock, as I was driving down Delaware Avenue from the dispatching center under the Walt Whitman Bridge, en route to my office on Walnut Street—Chestnut Street—as I passed Pier 98, a group of men was standing near the main gate, and some of the men recognized my car and yelled to me. I pulled into the gate, into the pier.

Q. That is Pier 98?

A. Pier 98, and parked my car and went back to talk with the men, and they told me of their grievance regarding this pushback, and they told me that they intended to not work.

I informed them that if they had a grievance, that they should not knock off; they should submit the grievance to

the union officials and we would process it through the

proper channels.

I talked with those men I would say about thirty minutes or so, and then men came to me from another ship with another problem, and because I had prior commitments that I had to take care of, I went back to the dispatching center under the Walt Whitman Bridge and got Paul Johnson and took Paul Johnson back to Pier 98 to look into these problems because I had to leave.

[fol. 131] I learned during the afternoon on Friday that these men did not turn to, did not go to work on three ships, one for Universal, one for Murphy-Cook, and one

up the line, I believe, for Jarka Corporation.

.I then contacted all of my officers and we got together and made plans to meet Saturday in an effort to try to get these men to work and also in an effort to try to prevent the problem from spreading because from the nature of the conversations or the nature of the talk that was done with me, I had the feeling that if the problem did erupt, it might spread.

On Saturday morning, all of the officials were at Pier 98, all of the officers of my local, including Mr. James T. Moock, the International vice-president, and Mr. Clifford Carter, the United States district vice-president, and we urged the men to the best of our ability to go to work and let us process any grievance that they had through channels, pursuant to the contract.

I wasn't successful. As a matter of fact, none of us were, and finally Mr. Muldoon came near the group that I was talking with on the outside and he spoke with me and I told him that it was a large group of men in the cafeteria and that I was going to go in and address them, and he and I walked right into the door together.

[fol. 132] And he said, "Dick, maybe we could get together and try to do something about this situation."

And I said to Mr. Muldoon, "All of our people are around. Can you get your people on a Saturday?"

He said, "Well, you are going to be around for a while, and you are going to address the men. In the meantime, I will make a few telephone calls and I will let you know if I can get some of our people and have a meeting in the Bourse Building."

Finally he came back and he told me that he would meet

at noentime.

We met in the Bourse Building and we talked about the problem. We talked at length about the manner in which—the circumstances under which this setback was made, and in the light of the fact that there were other ships at Pier-98 that worked on Friday at the same time, and these men were being set back was one problem I think that we were all quite concerned about.

And Mr. Muldoon did say to us that the setback was an error of judgment and he didn't say it just one time; he said it more than once. He said it down at Pier 98, and he

said it to me.

Saturday we held another meeting among ourselves after we left the Bourse Building and we decided to make up [fol. 133] circulars to distribute to the men on Sunday, and I called Novelty Printing Company at 4 o'clock and asked them to hold people by so we could have pamphlets printed and we would pay them overtime, if they would stay and print the pamphlets so we would be able to put them out on Sunday.

And after talking with your office with respect to making a check on language and so forth, your office informed me that they would make these circulars up for us, and you

people printed the circulars for us.

We distributed those circulars on Sunday.

Sunday night at 9:30, I called Paul Johnson and I called Talmadge. John Smith and Moock weren't at home.

Q. Before you go further, Mr. Askew, the circular to which you referred, is this the one that has been marked R-2 for identification that was distributed on the 26th?

· A. Yes.

Mr. Freedman: I offer it in evidence, Your Honor.

The Court: You do what? .

Mr. Freedman: It need not be read again. It has already been read.

The Court: What do you do, sir, again?

Mr. Freedman: I say I offer it in evidence.

The Court: Admitted. R-21

[fol. 134] Mr. Freedman: Yes, Your Honor.

(Exhibit R-2, formerly marked for identification, was received in evidence.)

By Mr. Freedman:

Q. Please go on, Mr. Askew.

Would you like to have the reporter read back the last thing you said?

The Court: You were talking about calling somebody on the telephone.

The Witness: Saturday night.
The Court: Sunday night.

The Witness: Saturday night.
The Court: No, Sunday night.
The Witness: Sunday night.

The Court: If you want to say something about Satur-

day night, but Sunday night-

The Witness: No, Sunday night, you are right, I called Paul Johnson and Talmadge and asked them would they help me to print another circular to distribute on Monday, and they assured me that they would.

I called Mr. Joseph Weiner, Esq., a member of your firm, Mr. Freedman, and asked him if he could have two girls at his office at 10 o'clock on Sunday night and we would make up enough circulars for distribution on Sunday, and [fol. 135] that we did.

By Mr. Freedman:

Q. Is that the circular that has been marked here R-1-for identification, Mr. Askew?

A. I think you have the circulars dated—this one was today.

Q. Yes, that's the 28th.

A. Yes, and this one.

Q. -was the 26th?

A. Was Monday, yes.

The Court: So R-1 has been offered?

Mr. Fréedman: B-1 is the later one, although it was printed first.

The Court: Yes, so the witness understands.

Mr. Freedman: Yes. See, R-1 came later, was the later one.

The Witness: Right.

Mr. Freedman: I offer R-1 also in evidence, Your Honor.

The Court: Admitted.

(Exhibit R-1, formerly marked for identification, was received in evidence.)

By Mr. Freedman:

Q. Please go ahead, Mr. Askew.

[fol. 136] A. We did meet at your office, Mr. Freedman, on Sunday night and make—print a circular to be distributed on Monday, and Monday after we met the other representatives of the union, Mr. Cane and Mr. Devine and Mr. Smith and so forth, we decided that the circular that we made up on Sunday night should be revised, should be altered, and then we made some changes with that circular and we had that circular printed and distributed instead of the one that we made Sunday night.

Q. The final product is the one that is now in evidence;

is that right, Mr. Askew?

A. Yes.

Q. Please go ahead:

The Court: That is R-1, now.

Mr. Freedman: Yes.

A. That's about all I have to say, Mr. Freedman.

By Mr. Freedman:

Q. Now, Mr. Askew, when the collective bargaining agreement was first consummated, originally consummated, do you recall when that was about?

A. It was in February, 1965.

Q. Now, before it was signed, was it submitted and read

to the membership at a membership meeting?

A. Yes, before that agreement was signed, I personally read the proposed agreement from beginning to end, in [fol. 137] addition to which I allowed the members to ask questions. I made clarifications of certain provisions in the new proposed agreement at that time, and before the membership voted on the agreement or when they were voting on the agreement, we had a half dozen copies of the agreement posted around the area where the voting took place.

Q. Would you say that the members of the union were

well acquainted with the provisions of this contract?

Mr. Scanlan: Objection, sir. The Court: Sustained.

By Mr. Freedman:

Q. When you read the contract to the members, did you read it verbatim, including this particular clause that is in

question?

A. I read every single word in the agreement, and while I was reading the agreement, every single officer of the local union sat behind me to make sure that I did not miss one single word.

Q. Mr. Askew, have you from time to time addressed the membership since this episode arose on Friday and dis-

cussed the matter with them?

A. I have addressed the membership every single day since this dispute has been in progress and I have addressed the membership in groups larger than five or six. At Pier 98 where the crux of the dispute is at I have ad-[fol. 138] dressed the entire group there several times, and several times during the day the entire group, because I

would stand out among the group and talk out loud, and they all can hear me. I have a pretty husky voice, and I urged them to return to work and allow the ships to work, and let us handle this through proper channels because that's the way it should be done in my judgment.

Q. What did you mean by "proper channels"?

A. Well, through the grievance machinery, as we always do.

Q. Under the contract?

A. Under the contract, yes, sir.

Q. When you said that you addressed the men several times during the day, was that in any one day or every day?

A. Every single day.

Q. How many times would you say that you addressed the men?

A. I must have addressed the men at least twelve, fifteen times since this thing has been into effect, maybe more. That's why my voice is a little bit husky now.

Q. And when you talked to the men how many men did

you talk to at a time?

A. I addressed the whole group down at Pier 98, and that's where the crux of the dispute was. The ships that are in dispute now are at Pier 98. I believe the one that Jarka had has left the port, I think. I don't think that is a problem. I think the other ships that are in dispute are [fol. 139] at Pier 98, to the best of my recollection.

Q. Mr. Askew, I show you two telegrams. I show you Plaintiff's Exhibit No. 3, a telegram, and ask you to exam-

ine it.

A. Yes, Trecognize it.

Q. Now, I ask you to examine Plaintiff's Exhibit No. 1 first.

A. I received this telegram.

Q. Now, was Plaintiff's Exhibit 3 a telegram sent by you and the other agents, the other officials?

A. Yes.

- Q. Did that correctly represent your understanding of what happened at the meeting on, what was it, Saturday?
 - A. Yes.
- Q. I show you a telegram marked P-2. Is that the telegram invoking the grievance procedure?
 - A. Yes.
- Q. You asked for a meeting with the Philadelphia Marine Trade Association?
 - A. Yes.
- Q. Under, I think in this telegram you say, under Paragraph 28 of the collective bargaining agreement?
 - A. Yes.
 - Q. Did you get any reply to it?
 - A. No.
- Q. Have they indicated any intention to go to grievance [fol. 140] in this matter?
- A. Nothing since Saturday. They met with us Saturday and discussed the case.
 - Q. That was before you sent them this telegram?
 - A. Yes.

[fol. 141] Q. Since you sent this telegram, have they communicated with you regarding this matter in any way, shape, or form?

A. No.

Q. Are you prepared to sit down and discuss it and carry through with this grievance procedure?

A. Yes, I think we ought to sit down and do something about it, if we can. Maybe we can do something about it.

Q. Is this what you had in mind when you told the men that the matter should be processed through the proper channels by going through—by resorting to paragraph 28 of the collective bargaining agreement?

Mr. Scanlan: Objection, sir.

The Court: Sustained. The telegram speaks for itself. Mr. Freedman: Well, I am not quoting the telegram. I am simply asking Mr. Askew whether this was in conformance with his understanding, with his intention to carry out the grievance procedure under the contract.

The Court: I don't believe I understand you. Mr. Freedman: Let me rephrase it.

By Mr. Freedman:

Q. Mr. Askew, you said to the men that they should return to work and permit this matter to be adjusted through the proper channels.

[fol. 142] The Court: He said yes to that.

By Mr. Freedman:

Q. Is that right?

A. Yes.

Q. Now, was the telegram marked Plaintiff's Exhibit 2 pursuant to that statement?

Mr. Scanlan: Objection, sir. The telegram speaks for itself.

The Court: Sustained.

Mr. Freedman: I am not talking about the telegram as such. I am asking whether he sent the telegram pursuant to his statement to the men to take the matter through proper channels.

The Court: The objection is sustained. It speaks for

itself.

By Mr. Freedman:

Q. Now, Mr. Askew, did you hold any meetings with your agents, with your other officials in the union, to discuss ways and means to get the men back to work?

A. Several times every day, sir. We stay together all

day every day now.

Q. Did you observe whether all of your other officials, fellow officials were actually addressing the men and attempting to get them to go back to work?

[fol. 143] A. I seen them all at one time or another addressing the men and urging the men to return to work and allow us to process this matter through proper channels.

Q. You heard them yourself?

A. I heard them myself, sir. Some of them stood right beside me, especially John Smith.

Q. Was this done every day?

A. Every day, sir.

Q. Did you see your men every day since Friday at various times during every day, addressing the men, urging them to go back to work?

A. Yes, sir.

Q. Mr. Askew, all during this time, have the union agents manned the dispatching center and dispatched men to the

ships?

A. Every morning, sir, we have some men there, what we can spare for a short period, and they have dispatched men every morning, Sunday morning, Monday morning, and this morning, and also Saturday morning. Every morning they have dispatched men.

Q. In other words, there hasn't been any time that the union agents were not available there dispatching men to

the ships?

A. That is right; they would be there for awhile every morning, sir.

Mr. Freedman: Cross examination.

[fol. 144] . Cross examination.

By Mr. Scanlan:

Q. Now, Mr. Askew, I think you testified that on Saturday morning—

Mr. Freedman: By the way, Your Honor, I don't know whether those telegrams were offered in evidence. If not, I offer them now.

The Court: Yes, they were offered in evidence and admitted. No, I don't believe so.

Mr. Scanlan: I don't think so.

Mr. Freedman: Well, if he doesn't, I will offer them myself. He closed his case without offering them. I will

offer those telegrams. I think Your Honor ought to have them.

The Court: They are admitted. They have been testified to by all sides, and they are certainly in the evidence, whether they are offered or not.

Mr. Freedman: I think it makes a big difference. The record wouldn't be complete, and, as a matter of fact, there is a question as to whether or not—

The Court: Exactly. They are in.

Mr. Freedman: That is why I offered them, Your Honor.
The Court: Exactly.

[fol. 145] (Exhibits Nos. P-1, P-2, and P-3 were received in evidence.)

The Court: All right, Mr. Scanfan.

By Mr. Scanlan:

Q. Mr. Askew, I believe that you testified on Saturday morning all your officials were at Pier 98 in the morning; is that correct?

A. I didn't say they were all there in the morning. I said we have all been together, and I am not sure about Saturday morning. Saturday morning was the first morning. Some of them might have been late Saturday morning getting to the pier.

I think all of them did come there sometime during Saturday morning, because that is where I gave the orders. I gave the orders for my officials to meet at the Bourse

Building at twelve o'clock.

The Court: Is that where your office is?

The Witness: No, sir, my office is at the Lafayette Building, a half block from the Bourse Building.

By Mr. Scanlan:

Q. Well, are you sure now whether or not all of your officials, that is the delegates of your local, were present at. Pier 98 on Saturday morning?

A. I am not positive about Saturday morning. That was [fol. 146] the first real morning of the dispute. I think sometime or other they came there during Saturday morning. I am not positive.

Q. Was Mr. Smith present at Pier 98 on Saturday morn-

ing?

A. He came there later. He was there earlier, to the

best of my recollection.

Q. Now, all of the officials attended this meeting in Mr. Corry's office on Saturday at around noontime, isn't that correct!

A. Right.

The Court: Is Mr. Corry's office in the Bourse Building? The Witness: Yes.

The Court: I am trying to connect the places here. All right.

Mr. Scanlan: Mr. Corry is the Executive Secretary of

the PMTA.

The Court: Yes, I know, but I didn't have his place of business.

By Mr. Scanlan:

Q. Now, isn't it true at that meeting you told Mr. Corry and Mr. Muldoon and Mr. Sobelman that the knocking off of the vessels on Saturday morning was unauthorized?

A. Yes.

Q. And didn't you also tell Mr. Corry and Mr. Muldoon [fol. 147] and Mr. Sobelman that you did not condone the action of the men in knocking off the vessels?

A. Yes.

Q. And didn't you agree to go down to the hiring center on Sunday and urge the men to go back to work?

A. Yes.

- Q. And didn't you agree that this setback provision was covered under the contract?
- A. We didn't discuss that at length, but I did agree that we have a setback provision in the contract and that some

ruling had been made on it by an arbitrator and that an appeal was taken to the ruling.

Q. And didn't you tell Mr. Corry, Mr. Sobelman, and Mr. Muldoon, that while you did not like the arbitrator's

ruling, nevertheless it was binding on your union?

A. I told the committee of your association at the Bourse Building that Judge Body had handed down a decision; even though an appeal was taken to it, nevertheless we were going to live up to that decision, unless there was a change, it was repealed or something.

Q. You said you were going to live up to Judge Body's

decision; is that correct?

A. His ruling.

Q. His ruling? [fol. 148] A. Yes.

Q. And didn't you also say that you were going to live

up to the arbitrator's award?

A. We didn't say much about the arbitrator's award. The only thing I said about the arbitrator's award was that I thought the arbitrator made a bad decision. I think the arbitrator's award is a bad award.

Q. Well, in spite of your opinion, didn't you tell Mr. Corry and Mr. Sobelman and Mr. Muldoon that while the arbitrator's decision might have been a bad decision that

you were bound by it?

A. I told him that we were obeying the orders of Judge Lord—Judge Body, even though an appeal had been taken to Judge Body's ruling, that we were going to abide by it, and, furthermore, I didn't think we should knock off any ships. I thought we should try to process the thing, the grievance, if we had one, through the proper channels. I feel that is better for everybody, better for the longshoremen and better for the port, and better for the city.

Q. Now, Mr. Askew, these circulars that have been introduced in evidence, referring to Respondent's Exhibit 1 and Respondent's Exhibit 2, I understand you to testify that those circulars were prepared in consultation with Mr.

Freedman's office; is that correct?

[fol. 149] A. This first circular—both of the circulars were dictated by me.

Q. They were dictated by you?

A. Yes, and we got advice from the lawyers with respect to any aspect of the circular that might be in violation of the law, as we always do.

Q. Didn't you previously testify that one of those circulars was prepared by Mr. Weiner in Mr. Freedman's

office?

A. This circular-

Mr. Freedman: He did not so testify. He absolutely did not so testify, and I think it is improper to try to mislead him.

The Court: It is my recollection. What difference does it make? Ask him again. That was my recollection. Let's not fight about it.

By Mr. Scanlan:

Q. What did you testify regarding the preparation-

A. I stated that I called Mr. Weiner at nine o'clock and asked him if he could make provision in his office with two girls to print a circular, to mimeograph a circular.

Q. Which is that, please?

A. Let me finish, please.

He had me wait until he made a few telephone calls, and he called me back and told me he would meet me there at [fol. 150] ten o'clock with his two girls to prepare the circular. But I dictated the circular myself, and I dictated both circulars.

I dictated one circular to my secretary in my office and the other one was dictated to a secretary in Mr. Freedman's office. I dictated both circulars.

Q. So then neither one of those circulars was dictated or prepared by Mr. Weiner in Mr. Freedman's office?

A. You said one of them was!

Q. I said neither one was?

A. Neither one was, I dictated both of them.

Q. Now, Mr. Askew, you have also identified the two telegrams which were marked P-2 and P-3, which have been admitted into evidence. Now, referring to the telegram marked P-3 for the moment, who prepared that telegram?

A. This telegram was prepared with the help of counsel.

The Court: Did you say prepared by counsel?

The Witness: With the help of counsel. The Court: With the help of counsel.

By Mr. Scanlan:

Q. Which counsel?

The Court: With the help of counsel he said.

By Mr. Scanlan:

Q. With the help of counsel? [fol. 151] A. Yes.

Q. Was that Mr. Freedman?

A. Mr. Weiner.

Q. Mr. Weiner.

A. And Mr. Freedman.

Q. Now, referring to the other telegram, P-2, who prepared that telegram? This is P-2.

A. This telegram was prepared with the help of counsel.

Q. Was that by Mr. Weiner or by Mr. Freedman or both?

A. Mr. Freedman.

Q. Mr. Freedman. Now, is this language in the telegram which you signed in which you said you did not intend to be entrapped into perpetrating the infamous award of Mr. Weiss, is that your language or is that Mr. Freedman's language?

A. That is both of our language. We worked it out together, Freedman and I, and the other officials. We wanted

that language in there.

Q. You agreed to that language before this telegram was sent, did you not?

A. Yes.

Q. And do you think that this language conveys to the PMTA that you intend to be bound by Mr. Weiss' award?

Mr. Freedman: Objection.

The Court: Overruled. We have the credibility involved [fol. 152] of this witness.

Answer the question, please.

The Witness: What was the question?

Mr. Scanlan: Would the Reporter please read the question.

(The question was read.)

The Witness: I don't think it shows that we didn't intend to be bound by it.

By Mr. Scanlan:

Q. So then you do intend to be bound by the award?

Mr. Freedman: Objection. This is a conclusion. Your Honor, this matter is now before the Court of Appeals for this Circuit, and this union has taken a position that that award is wrong, that Your Honor's decision is wrong, and we have a perfect right to appeal.

He is now asking him whether he is going to be bound by it regardless of anything. This is a matter for the

Courts, Your Honor.

The Court: No, it is a question now of the credibility of this witness. He said earlier one thing, and now counsel has asked him something else. It is a question of credibility.

You may proceed, sir. We understand your position. Overruled.

[fol. 153] By Mr. Scanlan:

Q. Will you answer my question, Mr. Askew.

Mr. Freedman: Is Your Honor asking him to pass judgment on—

The Court: I am not asking him anything. Counsel is

asking him.

Mr. Freedman: Well, I am going to object-

The Court: You are objecting. You have objected. Now, please, sit down. You are trying to run this Court.

Mr. Freedman: I take exception to Your Honor's very— The Court: You are very repetitive. You say the same thing over and over again.

Mr. Freedman: Well, this is the way I feel it has to be done, Your Honor. I am not trying to run this Court.

The Court: And you are not going to, my friend. You are not going to.

This is a question of credibility, and he may ask the question.

All right, sir, did you understand the question?

The Witness: What is the question? Read the ques[fol. 154] tion, please.

(The question was read as follows:

"So then you do intend to be bound by the award?")

The Witness: I don't understand the question. I don't understand the question.

Mr. Scanlan: Would the Reporter please read back the last two questions or three questions.

(The prior question was read as follows:

"And do you think that this language conveys to the PMTA that you intend to be bound by Mr. Weiss' award?")

The Witness: Where does the award fit into this picture?

By Mr. Scanlan:

Q. You are not answering the question.

The Court: He is not answering the question.

Mr. Freedman: I think he is, Your Honor. He is ab-

solutely answering the question.

I made the statement in this Court—if Your Honor wants to take the witness out, then it cannot be said I am making any suggestion to him.

His answer was a response to the question.

The Court: It was not responsive.

[fol. 155] Now, Mr. Askew, you will answer the question, please.

The Witness: What is the question?

Mr. Scanlan: Will the Reporter please read the question.

(The question was read as follows:

"So then you do intend to be bound by the award?")

The Witness: I don't understand the question.

By Mr. Scanlan

Q. Then I will ask you this question, Mr. Askew: Do you or do you not intend to be bound by the award of the arbitrator?

Mr. Freedman: Objection.

The Court: The same thing. He says he doesn't understand the question.

The Witness: I intend to be bound by the contract.

. By Mr. Scanlan:

Q. Does that include the award of the arbitrator?

Mr. Freedman: Objection.

The Court: Question of credibility. Overruled.

The Witness: I intend to be bound by the contract.

[fol. 156] By Mr. Scanlan:

Q. I don't think you have answered my question, Mr. Askew.

The Court: The Court has said that he hasn't answered the question. He has asked him to answer the question. He refuses to answer the question. He says that he intends to be bound by the contract. You have asked the question twice. That is enough.

Next question?

Mr. Freedman: I didn't hear what Your Honor said.

The Court: Next question, if you have any.

Mr. Scanlan: Yes, I do, Your Honor.

By Mr. Scanlan:

Q. Now, Mr. Askew, you said, as I understand your testimony, that you addressed the membership every day, I believe, from Saturday up until the present time. Now, you didn't mean that you addressed the entire membership of your union, did you?

A. I stated that I addressed all of the men down at Pier 98, and I think that pretty much all of the men who were involved on those two ships that are in dispute at Pier 98 have been at that pier every day since the inception of the dispute. I stated that I addressed those men, because they are the crux of the dispute, and certainly don't all of our men work at Pier 98 at one time. There are probably [fol. 157] maybe a hundred men or two hundred men down there, two hundred men I would say at most.

Q. Now, Mr. Askew, on Sunday morning where did you address the men?

A. On Sunday morning?

Q. Yes, sir.

A. On Sunday morning I was at Pier 98. I left Pier 98-

Q. What time did you get there?

A. Sunday morning I got to Pier 98, it must have been about eight-thirty, maybe eight o'clock.

Q. What time were the men supposed to report for work there?

A. Eight o'clock, and Sunday morning I had three thou-

sand copies of a circular to distribute.

Q. I am not asking about that, Mr. Askew. I am asking about the men that you addressed. Now, how many men did you address at Pier 98 on Sunday morning?

A. I addressed them all at Pier 98 on Sunday morning.

Q. How many men would you estimate were there?

A. There must have been three or four hundred. There were men there Sunday that weren't involved in the dispute. Longshoremen were there Sunday as spectators. I talked with them. I asked a bunch of them did they have jobs.

I didn't think that many people were involved or that many people were hired to work at Pier 98. There must [fol. 158] have been 150 or two hundred men at Pier 98 on Sunday who weren't working, who were there just to

see what was going on.

Q. Now, Mr. Askew, on Sunday morning, when you addressed these men at Pier 98, what did you tell them?

A. I told them to return to work and allow this grievance to be processed and handled through the proper channels.

Q. Did you tell them that their work stoppage was unauthorized?

A. Yes. I told them much more than that. It would take me a half hour to tell you all I told those men on Sunday. I told them quite a bit.

Q. Did you address any of the men who were ordered

to work the Murphy Cook ship at Pier 96?

A. Sunday.

Q. Yes, sir.

A. Sunday I talked to the men that were supposed to work the Murphy Cook ship. I personally talked with one gang to the extent that I was able to get them to return to work. They actually went to work, because two mem-

bers of the gang, the foreman and one of the deckmen, came to me and said, "What do you want us to do?"

I said, "I want you to go to work," because I talked to

one of them on the telephone Saturday night..

"We are trying to get our gang in."

[fol. 159] Then I went and yelled several times and yelled to the men, said, "Let's go to work. Let's go to work." And the last time I yelled to the men, "Let's go to work," John Smith came and said, "I want to stand beside you, Askew, and when you yell to the men, I am going to do the same thing."

He and I together yelled to the men to go to work. The only one we did get to go to work was this one gang.

Q. Did you appear at the hiring center on Sunday morning?

A. I was there a short while.

Q. Did you address the men?

A. I didn't address the men, no.

Q. How many men were there when you arrived?

A. I didn't take notice. I just went to the hiring center for a few minutes and talked to somebody, Johnson—I am not quite sure which agent was there at that time—but they all left when I did, because I had in my car the circulars to be distributed, and I made some provision to have circulars sent all up and down the line to the other ships.

I sent circulars to all of the ships, and I left Pier 98 and went to Pier 38 and 40, because two men went down there and told me that if some of you men go to 38 and 40 and tell the men to go to work, they will turn to; but they

stand out there and won't turn to.

We went down there. I parked my car, and Talmadge [fol. 160] stood there and addressed those men, and not a single man would go in the gate and go to work.

Then we left and went home.

Q. Now, Mr. Askew, on Monday morning, were you at the hiring center?

A. Monday morning, yes, I was there for awhile.

Q. What time were you there?

A. I am not sure. I was there kind of early.

Q. Did you address the men on Monday morning?

A. Where?

Q. At the hiring center.

A. No, I didn't address the men at the hiring center any morning. The agents did, but I didn't any morning.

Q. How many men were at the hiring center when you

were there?

A. I didn't notice. I know inside the dispatching office was packed, but I didn't pay any attention to who was on the outside. I talked to the officers on the inside who were not with me on Saturday night when we made up this circular. Then we decided to not distribute the circular. We thought something else should have been done to it, and we made some changes in it and had it printed again on Monday.

Q. Well, now, did you notice the men that were on the outside of the hiring center on Monday morning? [fol. 161] A. No, I told you once before I didn't notice them on the outside, didn't pay no attention to them.

Q. Wasn't there a large group of men outside the center

on Monday morning?

A. There might have been. I didn't notice.

Q. Now, there is a microphone at the hiring center and a public address system there, isn't there?

A. Yes.

Q. And this microphone and public address system have been used in the past to convey messages to the men; isn't that true?

A. Yes.

Q. And you yourself have used this microphone at times in the past, have you not?

A. Yes.

Q. Did you use the microphone on Monday when you were at the hiring center?

A. I didn't use the microphone any day at all to address the men about returning to work or anything about this dispute.

Q. Wouldn't it have been better to use the microphone to address all of the men rather than talk to the men in

groups?

A. Well, the agents, Mr. Scanlan, addressed the men down at the hiring center. We have four agents, and we have two secretaries, and we have a president, and we all [fol. 162] engaged in the same thing. All of us are doing one thing or another trying to get these men to return to work. The president does not have remonsibility of this entire thing. As a matter of fact, he couldn't hold it if he dropped dead.

Mr. Scanlan: If Your Honor please, I submit the answer is not responsive to my question.

The Court: It is not, but we will let it in the record.

Mr. Freedman: What was Your Honor's ruling?

The Court: I said it is not responsive, but we will let it in the record.

Mr. Freedman: I would like to say, Your Honor, I think it is responsive. I think it bears on the point.

The Court: You just disagree with me. The Witness: Your Honor, may I—

The Court: He has something else he wants to say.

The Witness: Could I have a drink of water?

The Court: Yes.

All right, Mr. Scanlan.

By Mr. Scanlán:

Q. Now, on Monday, after you left the hiring center, where did you go?

A. Monday when I left the hiring center, I went up the [fol. 163] avenue, and after I was in town for about twenty minutes, I came back to Pier 98.

Q. What time did you come back to Pier 98?

A. I don't know. It must have been about 9:30.

Q. Then you didn't go directly from the hiring center to Pier 98?

A. Not on Monday.

Q. Pier 98 is where most of the trouble was, isn't that true?

A. Yes, but that was evered by the agents.

Q. You left that up to your agents; is that right?

A. A lot of things I leave up to the agents.

Q. Now, when you got back to Pier 98, not any, of the men were working the ships, isn't that right?

A. That is right.

Q. Now, were you at the hiring center this morning?

A. Yes.

Q. What time did you get there?

A I was there this morning about eight o'clock, maybe a little before.

Q. And how many men were at the hiring center when

you got there?

A. Well, it appeared to be maybe a couple hundred. It might have been a little more when I arrived. When I left it was a large crowd there. There were so many, I [fol. 164] couldn't tell how many. It was a large crowd, because it wasn't too easy for me to get my car out of the gate, when I left.

[fol. 165] Q. Did you use the microphone at the hiring

center to address the men that were there?

A. I repeat again, I haven't used the microphone at the hiring center to address the men about this dispute since the dispute has been in progress, not a single time.

Q. Did you talk to the men at all at the hiring center

this morning?

A. No more than what men were inside of the dispatching office.

Q. Did you talk to the men who were inside the dispatching office?

A. Talked to some of them, yes.

Q. And approximately how many men did you talk to?

A. It must have been maybe twenty-five or thirty men in the hiring center.

Q. And what did you say?

A. In the dispatching office.

Q. And what did you say to them?

A. Told them they should return to work.

Q. Did you tell them that their work stoppage was unauthorized?

A. Yes.

Q. Now, at any time that you talked to these men from Sunday morning up until this morning, did any of your [fol. 166] men ask you for a union membership meeting?

A. Yes, I had—yes, I had a couple men ask me for a

meeting.

Q. Did some say they didn't understand the dispute and they thought it might be resolved if there was a union membership meeting?

A. Could I make a statement, Mr. Scanlan?

Q. Answer my questions, Mr. Askew. That's all I am asking you.

Mr. Freedman: If the statement is an answer— The Witness: My statement, it would be an answer, yes.

The Court: Now, wait a minute.

The Witness: Could I make a statement in answer to

The Court: No, just answer the question. Then you can explain.

The Witness: Yes.

What is the question, sir?

By Mr. Scanlan:

Q. The question was, did any of the men ask you for a membership meeting stating that they didn't understand this dispute and they thought it might be resolved if they had a membership meeting?

A. Nobody said that to me.

[fol. 167] Would you like to know what they said?

Q. You can tell us what they said, if you want.

A. The men that talked to me about a meeting wanted to have a meeting so they could vote as to whether or not

they wanted to return to work, and I said I would not entertain a motion as to whether or not they were going to return to work because you are supposed to be working. Suppose you have two thousand men in a meeting and somebody makes a motion to return to work and five hundred men vote to return to work and fifteen hundred vote not to return to work; what are you going to do then?

I said, you are supposed to work, and every single long-shoreman, I believe, understands that he is supposed to

work.

That's what we told them. We didn't tell them that this thing was only unauthorized. The work stoppage is illegal; it is in violation of the law, in my judgment. I am not a lawyer, but I think the work stoppage violates the law even, and we are supposed to obey the law.

Q. Now, Mr. Askew, I am happy to hear you say that, and on that basis I will ask you in connection with the telegram which you sent on Monday why you were asking for a grievance or arbitration of this dispute if the dispute at the present time is illegal and in violation of the law.

Mr. Freedman: If the Court please, this is a most mis-[fol. 168] leading question. In the first place, he is talking about an interpretation of the contract.

The other one, he is talking about a dispute.

What Mr. Askew had done here was to ask for a grievance meeting with respect to the dispute and that's entirely different than what Mr. Scanlan is putting to him now.

The whole thing, the whole question is most misleading and it is a real paradox.

The Court: I don't think so.

Answer the question. The Witness: What?

Read the question, please. Will you read the question, please?

(The question was read.)

A. That's a hard question to answer, I will tell you the truth.

Read it again, please.

I am going to try to answer that question because I want to answer it.

Read it again.

(The question was re-read.)

A. I asked for a grievance or meeting with an effort to try to resolve the thing because irrespective of whether it is in violation of the law or not, and it is in violation of [fol. 169] the law, in my judgment, still it has to be resolved sometime, and how was it going to be resolved? That's what I would like to know.

It has to be resolved one way or the other. You can't keep the ships tied up. If you do, the port will dry up and nobody would have work, business or anything.

So how are you going to settle if you don't sit down and

talk about it?

The Court: What is going to dry up?

The Witness: The port, the business in the port. The Court: Oh, the port? A new word for me. The Witness: The port, the Port of Philadelphia.

The Court: The port?

The Witness: The port, yes.

The Court: Oh, port, p-o-r-t, port?

The Witness: And furthermore, I would like to say to you that Mr. Muldoon suggested Saturday—the president of your association said to me Saturday—"Maybe if we get together we can settle this thing," and I am saying in effect the same thing that he said.

The first thing he asked me, "How can we settle this?

Maybe we can get together and settle it."

[fol. 170] By Mr. Scanlan:

Q. Mr. Muldoon-

A. The only difference here is, he sent a telegram, and I tell you now, I would not have sent a telegram. I

would have called Mr. Corry up, but Mr. Corry is foxy. He starts sending telegrams, and he was doing exactly what we say he was trying to do, entrap us. That's why he sent a telegram.

He could call me up and talk with me on the telephone, either he could walk down to my office and talk with me. He doesn't have to send me a telegram. I would be glad to have him in my office, and why he sent a telegram, he is trying to trick us one way or another.

Q. I think you testified what is in Mr. Corry's telegram

is true, did you not?

Mr. Freedman: Now, if the Court please, here we go again. I would like to make my position very clear on the record here now.

The Court: It is very clear.

Mr. Freedman: No, I want to set it straight for the record.

An unauthorized strike or a work stoppage is one thing. A dispute taken to grievance is something completely independent.

The Court: You said this before.

[fol. 171] Mr. Freedman: Sir?

The Court: Don't you think you said this before this afternoon?

Mr. Freedman: Apparently I didn't make myself clear.

The Court: You made yourself very clear. I ruled against you, sir, and when you repeat and repeat and repeat—

Mr. Freedman: There is nothing illegal about taking

a dispute to grievance, Your Honor.

The Court: We understand that. We understand, but you are repeating yourself and I have ruled against you consistently. By this time you ought to know that I am going to rule against you.

Mr. Freedman: But I still have got to do it.

The Court: Do you like to hear yourself talk or do you like to hear me talk?

Mr. Freedman: I don't like to hear myself dwell on it, but I have got a job to do.

The Court: Let's get on with the case.

By Mr. Scanlan:

Q. Now, Mr. Askew, referring to your conversations with Mr. Muldoon at the meeting on Saturday, didn't Mr. Muldoon make it clear to you that the PMTA did not in[fol. 172] tend to modify this setback provision?

A. He made that statements

Q. And didn't he also make the statement that the PMTA did not intend to rearbitrate this issue?

A. He didn't say that. If he said that, sir, it wouldn't have mattered to me because we had an arbitrator who ruled one way five times and then reversed himself—ruled one way four times and then reversed himself on the fifth time. An arbitrator did that to us, so I think maybe an arbitrator might reverse himself or somebody else might reverse himself because we had it done to us. An arbitrator ruled five times he had no jurisdiction to fix the gang size—four times—and the fifth time, he said he may have—he is not infallible and he may fix the gang size.

Q. Well, now, Mr. Askew-

. A. And I haven't forgotten that one bit.

Q. Mr. Askew, I take it, then, what you are asking for

is to rearbitrate this dispute; is that correct?

A. Didn't ask them about that one bit. He asked—Mr. Muldoon said to me, "Do you think if we got together today we can work this out one way or another?"

I said, "Well," I said, "can you get your people? My

folks are here."

He said, "I will make a few phone calls and I will talk [fol. 173] to you and I will let you know."

He come back. He said, "We will meet at 12 o'clock and

try and settle it."

Mr. Scanlan: Now, if Your Honor please, I submit that answer is not responsive to my question and I would like to ask the question again to Mr. Askew.

The Court: You may ask it.

By Mr. Scanlan:

Q. Mr. Askew, as I mentioned and asked you previously, I take it now on the basis of your last two answers, that what you are asking for at the present time is to rearbitrate this dispute?

Mr. Freedman: Objection.

The Court: Well, I think it is a proper objection. Be a little more specific, Mr. Scanlan.

By Mr. Scanlan:

Q. Mr. Askew, you have testified-

The Court: Arbitrate presently, but that arose on Friday morning; is that right?

Mr. Scanlan: Yes, Your Honor. I am tying it into that. Mr. Freedman: That dispute is a matter of the past,

Your Honor. This is a brand-new dispute. -

The Court: It might be to you, but I have already ruled [fol. 174] that it isn't.

By Mr. Scanlan:

Q. Mr. Askew, the arbitrator ruled that the employers have the right to set back without qualification?

A. That's right.

Q. Isn't that correct?

A. That's right.

Q. And this ruling was made as an interpretation of the contract between the parties?

A. That's right.

Q. And I am asking you now, are you asking the PMTA

to rearbitrate the award of Mr. Weiss?

A. I did not ask the employers to rearbitrate. I asked them—I said in my letter that I was invoking Clause 28, and I want them to set up a meeting so that we can try to resolve this dispute. I didn't say "arbitrate the dispute"; try to resolve it.

Q. Isn't it true, Mr. Askew, that when you left the meeting on Saturday that it was agreed that the only way you could resolve this dispute since it was covered by the arbitrator's award was for the union to get the men to go back to work?

A. There was no agreement to that effect. As a matter of fact, we made absolutely no agreement: We promised that we would make every effort that we could to get the [fol. 175] men to go to work Sunday, and your people testified to that and you also stated that in your telegram, that we stated to your people that we were going to do all that we could Sunday to get these men to go to work.

Q. Isn't that true? Didn't you agree at the meeting on Saturday at noontime that you would do everything you

could to get the men to go back to work?

A. We agreed, we stated that we were going to do all that we could to try to get the men to go to work and we did that.

- Q. Well, do you think sending a telegram on Monday, and asking for a grievance and arbitration and calling the award an infamous award is getting the men to go back to work?
 - A. Oh, I think the award is ridiculous.
- Q. Do you think if you notified the men and tell your men that you think the award is ridiculous—
 - A. I didn't tell the men that.
 - Q. —that they are going to go back to work?
 - A. I didn't tell the men that.
- Q. I am just asking you the question, Mr. Askew, do you think that if your men know that you feel that this award is ridiculous as you have just testified that they are going to go back to work?

Mr. Freedman: Your Honor, this involves so much speculation, he is probing into what the witness might think [fol. 176] in the future, I think that purely it is a matter, of speculation. The question is highly improper. The question is evidentiary in any sense of the word.

The Court: Overruled; exception noted.

By Mr. Scanlan:

Q. Would you answer the question?

A. Would you read the question back, please?

(The question was read by the reporter as follows:

"Q. Well, do you think sending a telegram on Monday, and asking for a grievance and arbitration and calling the award an infamous award is getting the men to go back to work?")

A. This doesn't have any effect on the men. The men don't know a thing about the telegram. They didn't know what was in the telegram or anything and what I have said to you—

By Mr. Scanlan:

Q. Mr. Askew-

A. And what he said in the telegram, I never sent to to the men.

Mr. Scanlan: I believe I asked another question related to Mr. Askew about "ridiculous."

Would you read that?

That's the question that I want answered.

(The question was read by the reporter as follows:

[fol. 177] "Q. I am just asking you the question, Mr. Askew, do you think that if your men know that you feel that this award is ridiculous as you have just testified that they are going to go back to work?")

Mr. Freedman: I think he did answer that, Your Honor. The Court: No.

Mr. Scanlan: I don't think he did.

Mr. Freedman: The record will show.

A. The men don't know my feeling about the award. I haven't even discussed it with them, except it was made—it was affirmed by a judge, and knocking off the ship and

walking off the job was in violation of the law and also it was without the sanction of the union.

Mr. Scanlan: I have no further questions.

Redirect examination.

By Mr. Freedman:

Q. Mr. Askew, what has been the custom in the past regarding arbitration of specific disputes, whether they relate to specific disputes or whether they carry forward—

Mr. Scanlan: Objection. The Court: Sustained.

[fol. 178] By Mr. Freedman: 1

Q. Mr. Askew, is there any custom and practice in the port regarding the arbitration of particular disputes?

Mr. Scanlan: Objection.

By Mr. Freedman:

Q. -as president-

The Court: Sustained.

Mr. Freedman: May I ask on what grounds, sir?

The Court: No. You may ask, but I don't choose to answer it.

By Mr. Freedman:

Q. Mr. Askew, does an award in any particular case extend over to any other dispute?

Mr. Scanlan: Objection. The Court: Sustained.

Mr. Freedman: Your Honor, I am going to make an offer. I don't know whether Your Honor is excluding this because of any possible leading character—I have tried to take out the leading character, if there was any—or be-

cause of the substantive nature of the question, because if it is the latter, I would like to make an offer of proof.

The Court: You may make an offer of proof.

Mr. Freedman: I offer to prove by this witness that throughout the years, whenever a dispute is grieved and [fol. 179] arbitrated, the decision which is rendered relates solely to that dispute and no other with the result at any time in the future, even though the same principle, the same issue may be involved, it is regrieved and rearbitrated and, as a matter of fact, we have specific evidence here in an arbitrator's award, Father Comey's award, which on four occasions, the same issue came up that he held one way; the fifth occasion, the same question came up and he reversed himself.

I offer to prove that the custom and practice in this port under the contracts down through the years, that the decision whenever it is made relates only to that specific set of facts and no other, and when you ask under these circumstances whether a witness is going to be bound by that award, it means by that award which is past already. Whatever claim they might have made for back pay, that is done. They can't make any further claim. They are

bound by it.

But this decision does not extend as res judicata to any other case in the future.

The Court: Is that your offer? Mr. Freedman: That's my offer.

The Court: Refused.

The question you pose is a legal question and one for the Court to decide and not this witness.

Mr. Freedman: Is what?

[fol. 180] The Court: Next question.

One for the Court to decide and not this witness.

Mr. Freedman: Not the custom and practice, Your Honor. That's not for Your Honor to make the decision, what the custom and practice is in the port.

The Court: Refused, for that and other reasons, for

the reason I gave and other reasons.

Mr. Freedman: This is a question of fact, Your Honor.

The Court: Refused.

Mr. Freedman: Exception, Your Honor?

The Court: Exception noted.

Anything else?

Mr. Freedman: I have made my statement.

Oh, you mean from this witness?

The Court: Any other questions of this gentleman?

Mr. Freedman: I think so.

I take it, then, that I need not pursue this line of examination because Your Honor is not going to permit me to pursue it?

The Court: No. :

Mr. Freedman Since you consider this as a matter of [fol. 181] law and will not consider it as a matter of fact; am I correct, sir?

The Court: Yes, sir.

Mr. Freedman: And my objection is of record.

The Court: Yes, sir. . ~

By Mr. Freedman:

Q. Now, Mr. Askew, Mr. Scanlan asked you a question before that you indicated you did not understand, and I would like to pursue that. I think he asked you—and I will do my best to phrase it as accurately as I can—I think Mr. Scanlan asked you whether you intended to be bound by the arbitrator's award, and you said you did not understand that question; is that right?

Mr. Scanlan: I object, Your Honor. This matter has been covered in the cross-examination.

Mr. Freedman: Well, you are not going to deprive me of the right to rebuttal, are you, Mr. Scanlan?

The Court: It is not rebuttal; it is repetitious.

Mr. Scanlan: It is repetitious, and it is not proper.

The Court: Your next question? What is your next question?

Mr. Freedman: He opened the door on cross-examina-[fol. 182] tion, and I would like to pursue it on rebuttal.

This is my right, Your Honor.

The Court: Maybe it is; I don't know whether it is or not, but because you say it is your right doesn't make it your right. The Court decides whether or not you have a right to do this. I will rule out that question.

What is the next question?

Mr. Freedman: If I don't make myself clear, Your Honor wouldn't have—

The Court: Your position is very clear. Go ahead.

By Mr. Freedman:

Q. Mr. Askew, did you consider the Weiss decision to apply to any other dispute other than the one that was before Mr. Weiss on a specific set of facts?

Mr. Scanlan: Objection.

The Court: Sustained.

We have covered that two or three or four times.

Mr. Freedman: I don't think so, Your Honor.

The Court: I think we have.

Sustained.

Mr. Freedman: Well, you have permitted Mr. Scanlan to ask the question ad infinitum, and I am trying to explore it now so that at least we will get the record as clear as we [fol. 183] can. If it was all right for Mr. Scanlan, it should be all right for me in rebuttal.

The Court: I have ruled, sir.

Mr. Freedman: Exception, Your Honor.

The Court: 22, if you need them, or however many you want.

Mr. Freedman: Sir?

The Court: You have all the exceptions you want. I have given it to you once. Now you want another one. Shall I say "exception" again, sir!

Will you proceed with the next question?

Mr. Freedman: I think, I am sure I have an automatic exception, but I say it, Your Honor, in order to suggest to Your Honor—

The Court: Don't be so worried, Mr. Freedman. Let's

Mr. Freedman: I am worried, Your Honor. I take this

thing very seriously.

The Court: I take it very seriously, too, but I think you are trying your best to prolong the proceedings.

Mr. Freedman: Sir?

• The Court: I think you are doing your very best to prolong the proceedings, asking questions that are repetitious. [fol. 184] Mr. Freedman: Your Honor, I object to that statement.

The Court: You do? That is too bad.

Mr. Freedman: I certainly do. The Court: That is too bad.

Mr. Freedman: I don't think it is fair.

The Court: I am sorry, sir, that's the way I feel, because you have been repeating yourself and repeating yourself. Now, go ahead.

Mr. Freedman: Well, that may be Your Honor's in-

terpretation, but I don't look at it that way.

The Court: I might be wrong. I have been in other cases. I have been reversed by a higher court, so I might be wrong in this.

Mr. Freedman: I have no further questions, sir.

The Court: Mr. Askew, you have been in court all afternoon?

The Witness: Yes, sir.

The Court: And you have seen a number of people here in this audience?

The Witness: Yes.

The Court: Including members of your union; right?

The Witness: Yes, sir.

[fol. 185] The Court: Other than officials of your union? The Witness: Yes, sir.

The Court: So what you have testified to here has been heard not only by officials of your union but members of the union who work on the waterfront?

The Witness: Yes, sir. The Court: All right.

Mr. Scanlan: I have no questions, Your Honer,

By Mr. Freedman:

Q. Might I ask, Mr. Askew, did you invite any members up to this hearing?

Mr. Scanlan: Objection. The Court: Overruled.

A. No, I didn't invite any members to the hearing.

By Mr. Freedman:

Q. And did you suggest to any members that they come up to this hearing?

A. No, no, sir.

Mr. Freedman: That's all. The Court: Next witness.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Freedman: Mr. Moock, please.

A Voice: Your Honor, may I have the pleasure of addressing the Court?

The Court: No, no.

[fol. 186] A Voice: If they keep asking-

The Court: Now, wait a minute, will you please sit down. Mr. Freedman is the attorney for the respondent in this case. You act through him, not through yourself.

Mr. Freedman: I would like to say for the record that I don't see any objection to any member of the union coming up here and I don't see any reason why there should be any criticism of any member coming up here.

The Court: There wasn't any criticism.

Mr. Freedman: Of anybody. I think every member has a right, the whole union has a right to be here at this hearing and listen to what is going on.

The Court: I agree with you one hundred percent, sir. Mr. Freedman: Well, I don't understand why Your Honor made such a point of it with the witness, as though it is something to be severely criticized for.

The Court: I didn't criticize at all. He just said there was no publication of his ideas and he published them

right here in court.

Mr. Freedman: Well, did he have any alternative-

The Court: No, I am just asking.

Mr. Freedman: These men are entitled to know what [fol. 187] he thinks about it.

The Court: Exactly, and they probably do. They have been here.

Mr. Freedman: I am sure that Your Honor didn't keep this hearing secret. It was certainly—

The Court: No, I know I read it in the paper this morning, so everybody reads the paper, I assume.

[fol. 188] Mr. Freedman: Everybody knew about the hearing before we did. As a matter of fact, the longshoremen is just as good as anybody else in the public. They have got a right to be here.

The Court: Indeed, they are citizens of the United States. They can be present. I haven't excluded anybody

from this hearing.

Mr. Freedman: I couldn't understand why Your Honor sort of implied these people didn't have a right to be here.

The Court: I didn't imply anything. You heard the question; you heard his answer.

Mr. Freedman: So that I am not sure whether I took an exception to your questions of the witness, but if I didn't, I want to make it clear that I object to it now, that is, regarding the presence of the other members in this courtroom.

JAMES T. MOOCK, sworn.

Direct examination.

By Mr. Freedman:

Q. Mr. Moock, what is your position?

A. I am the fourth International Vice-President of the [fol. 189] ILA.

Q. For how long have you been on the Philadelphia waterfront?

A. Since 1925.

Q. And since what time have you been holding office?

A. I became Assistant Secretary of Local 1291 in 1946. I became Atlantic Coast District Vice-President in 1951 and became an International Vice-President in 1955.

Q. And you have been serving as an International Vice-

President since that time?

A. That is correct.

Q. Is the Philadelphia area within your jurisdiction of the International Union?

A. Yes, it is, from Trenton in New Jersey to Artificial

Island, 18 miles below Wilmington, Delaware.

Q. Now, in your capacity as International Vice-President did there come to your attention the matter, the episode which is involved in this hearing?

A. Yes, it did.

Q. That is the work stoppage which started on Friday?

A. Yes, it did.

Q. Would you tell the Court what you know about it

from the very beginning?

A. At slightly after 8:00 o'clock on Friday morning I went into the dispatching center as I do every morning. I [fol. 190] went over to the representative of the PMTA there, Joe Evans, and I says, "What does it look like this morning?"

He said, "We have 53 gangs." He says, "We have 12

setbacks."

I says, "12 setbacks and the sun shining?"

He says, "Yes, you have got 12 setbacks and one of them is a problem at Pier 98."

I immediately got back into the car; I went over to Pier

98.

In the meantime some of the men had drifted away. Other of the men were belaboring Mr. Vincent Smith and Mr. Monroe of Murphy-Cook because they had been set back. They had been told that they had been set back on their arrival at the pier. Some of them said quarter to eight and some said at ten minutes of eight.

I then looked around. There was a very few then, and I then eventually found out that also the States Marine

ship on the north side of 96 had not turned to.

I hung around there a little while, trying to find out what all the details of the case was, and I found out that they had worked the day—that they had been there the day before, that they had stood by on account of the snow, and at about 3:30, 3:00 or 3:30 in the afternoon when they saw that the snow wasn't going to let up, that they got [fol. 191] sent home and they were ordered to appear at 8:00 o'clock in the morning.

Most of them seemed to be complaining to me that here were three ships, three other ships at Pier 98 that were

working, and these two were not.

I then looked around. There was very few then, and other three ships and asked them at what time their first draft had gotten out, and they told me approximately about 8:30.

I then went back out to the gate. By the time I got there, there was very few men around there.

I then got in my car and went back to the office, and I heard that there was going to be a problem there at 1:00 o'clock.

I got tangled up into something else, so that when I actually got back to Pier 98, it was about five or ten after 1:00, and at that time again some of the Murphy men were belaboring Smith and Monroe, and I say, "You are finding fault with the wrong people," that they are not

responsible for this setback, that the setback has been decided by Cunard, and, I says, probably by some man who was 100 miles away from here where it is snowing; he probably took the night report, night before weather report which said at noontime that it would stop and, I says, "That is why we are in the situation."

[fol. 192] I then took a walk down to these three ships no, in the morning, it was two ships, and then at 1:00 o'clock another ship came in that had been in Camden, so that made it three ships in the afternoon on the north side of

Pier'98.

I hit the first—the first open door I came to, there was some of the men who were working for McCarthy. One of them very vehemently said to me, "This is an abuse. It has been going on for five or six months and it is about time it stopped, and what you should do is go along and knock all the ships off that is working."

I says, "No, we cannot do that." I says, "We have a con-

tract and we are bound by that contract."

That is the balance of my discussion on that day.

On Saturday morning, I got there, I would say, approximately again about quarter after 8:00. I went to the center first and then I went over to 98, and as I got there, Paul Johnson came along, and he says, "I was just talking to Tobin," and I am not sure whether he said Smith or Monroe of Murphy-Cook but he says, "I tried to get them to talk these people into four-giving the men four hours and we could resolve this problem."

I then got into a discussion with a few of the men, and I says, "This thing is not right." I says, "You should [fol. 193] go back to work and let us settle this thing in a

proper fashion."

Later on I found out that some of these men had ridden up the avenue and had knocked off other ships.

Paul Johnson then come over and he says, "We have a

meeting arranged with the PMTA people at noon."

I was only in rough clothes at that time. I went back home and changed my clothes and I went into the Bourse Building at 12:00 o'clock, a little after 12:00.

Out there we had a meeting in which all the officials of 1291, Carter and myself attended, plus Mr. Muldoon, Mr. Sobelman and Mr. Corry.

We had a discussion and in the discussion I said that it has now developed that this setback clause is being abused. I says, "Yesterday morning was a case where it had been raining at 6:30, it was stopped at 7:00 o'clock, all the ships turned to but these three, and these three cancelled." I says, "To me, with the sun shining, just before 8:00 o'clock, that clause is being abused."

[fol. 194] I can remember Mr. Muldoon saying, "There is no doubt in my mind that an error of judgment has been made by Cunard." He says, "I have no trouble, because I ordered my men—

- Q. Who said that?
- A. Mr. Muldoon.
- Q. The same gentleman that was on the stand here before?
 - A. Yes.
 - Q. Go ahead.
- A. He said, "What do you think will settle this thing?"
 I said, "At this moment it will take four hours to settle
 it."

I had very little discussions that day.

After we left there, we went back to the Lafayette Building at which a circular was drawn up and was prepared to be put out Saturday morning or Sunday morning.

Q. Now, did you at any time tell the men not to work or

to engage in a work stoppage?

A. At no time from Friday morning until this morning at ten o'clock have I ever told anyone not to go to work. I have went out there every day, Sunday included, and I was there every morning after Saturday. I was there no later than seven o'clock in the morning.

Q. Did you talk to the men?
[fol. 195] A. I have talked to the men.

Q. What did you say to them?

A. It seemed to me like every time I took two steps, I was surrounded by another group of ten or twenty men, and I kept continuously telling them, "Go back to work and let us settle this thing in an orderly fashion."

Q. And what did you mean by "orderly fashion"?

A. Through the grievance procedure.

Q. Now, were you on the waterfront where this work stoppage was taking place every day since Friday?

A. Yes, I have.

Q. And in the course of your regular duties, did you observe the other union officials of Local 1291 along the waterfront?

A. Yes, I did.

Q. What did you observe them doing and saying?

- A. I saw every one of them telling the men that they should go to work and let's settle this thing in an orderly fashion or manner, whatever expression you want to use. I saw no one specifically in the official family telling the men not to turn to.
- Q. Now, when you heard them telling them to go back to work, did they have a ring of sincerity to them?

Mr. Scanlan: I object. The Court: Sustained.

[fol. 196] By Mr. Freedman:

Q. Mr. Moock, I would like you to identify those officials whom you saw on the waterfront from time to time addressing the men, telling them to go back to work.

A. On Friday afternoon, the one I was with most of the time was Paul Johnson. On Saturday morning, Paul Johnson, Deviney.

on, Deviney

Q. Who?

A. Ed Devine. Turk Kane was there. Huggins was there.

Q. Huggins is what?

.A. He is the financial secretary.

Q. And Turk Kane, Mr. Kane is what?

A. The assistant financial secretary, and Alex Talmadge was there, and John Smith. John Smith, to the best of my knowledge, he was not there the first thing Saturday morning. If I am not mistaken, he came along a little later. He wasn't there at the very beginning.

Q. Now, how many times during the day would you say

that they addressed the men?

A. Down there I can't specifically say how many times they addressed the men, because I know it got to be like a broken record with me, because every time I moved around, somebody wanted to ask me a question; I had to go through the whole routine, all of this, that the men should turn to and let us settle it.

[fol. 197] So I had my hands full telling them, and I couldn't say what they were doing on this side or that side, but I know they were talking to the men, and any time that I was close enough to hear them, they were telling the men to turn to.

Q. So that so far as you were concerned, it was a continuous thing all day long, ever since the—

A. A few times, when I left 98 and went up to the office, there was different groups of men that were in there, and they were telling the men the same thing up in the office.

Q. Now, would you say that it was an all-day proposition

with the other officials, too?

A. To the best of my knowledge, I would say yes.

Q. Now, Mr. Moock, I will ask you about the custom and practice which exists here in the port.

Mr. Freedman: Now, if Your Honor is going to adhere to the same ruling, I would make the same offer of proof, to prove by this witness also, particularly since he has been an officer down through the years—

The Court: The same offer, the same ruling.

Mr. Freedman: He has actually served on these panels and is thoroughly familiar with the practice which has been followed under all of the contracts, including the current one.

[fol. 198] The Court: Same offer, same ruling.

By Mr. Freedman:

Q. Mr. Moocks when you named all of the officials, did you see Mr. Askew down there?

A. Oh, yes, Mr. Askew was there every morning that I can remember. Some mornings he was there before me. Other mornings he came along a little after I got there.

Q. And did you hear what he said to the men?

A. Every time I seen him talking to the men, he was giving them the same story I was giving them, to turn to, let's get this thing settled.

Mr. Freedman: That is all.

The Court: Any cross, Mr. Scanlan?

Mr. Scanlan: Yes, sir.

Cross examination.

By Mr. Scanlan:

Q. Mr. Moock, you are familiar with the provisions of the contract, the setback provisions, Section 10(6), are you not?

A. Yes, I am.

Q. And under those provisions there are no qualifications attached to the employer's right to set back; isn't that true?

A. That is what Mr. Weiss said in his decision, yes.

Q. And the decision was a result of the dispute which we had back in April, 1965, is that correct? [fol. 199] A. That is correct.

Mr. Freedman: Now, Your Honor, I am going to object to this line.

The Court: Sustained.

Mr. Freedman: Well, I would like to put my reason on the record.

The Court: All right.

Mr. Freedman: I would like to object to this line, because this is a contempt proceeding, and if Your Honor is going to open the door to the merits of this complaintThe Court: I have sustained your objection.

Mr. Freedman: Oh, sustained. I still would like to put the reason on the record, so that it appears for—

The Court: You know what I said a little while ago. I have sustained you now, sir. What else can I do?

Mr. Freedman: Just let me put it on the record.

The Court: All right, put it on.

Mr. Freedman: I want to say that Mr. Scanlan is now trying to determine and determine through this witness and elicit testimony, a conclusion which is now for the Court of Appeals to decide and which may be the subject of a dispute in the future.

He is trying to test the merits of the entire dispute instead of this contempt proceeding. Now, if we are go-[fol, 200] ing to get into the merits, what I wanted to say—and there has been a lot of questioning from him on this source—I think that we ought to throw the whole door open.

I don't think that in this contempt proceeding it has— The Court: The objection is sustained.

By Mr. Scanlan:

Q. Mr. Moock, under the provisions of the contract relating to the setback, there is no reference at all to sunshine or weather conditions; isn't that correct?

Mr. Freedman: Objection, Your Honor. Again we are going into the contract

The Court: Sustained.

By Mr. Scanlan:

- Q. Now, Mr. Moock, you attending this meeting in Mr. Corry's office on Saturday at noontime, did you not?
 - A. That is correct.
- Q. And at that time when you were present, isn't it true that you and other representatives of the union stated to Mr. Muldoon, Mr. Sobelman, and Mr. Corry, that the work stoppage on the waterfront was unauthorized?

A. That is correct.

Q. And isn't it true that you stated that the work stop-

page was illegal?

[fol. 201] A. I never remember at any time saying anything about it being illegal. I did use the expression that as far as I was concerned this was a wildcat strike, but I also said that in my opinion this was an abuse of the setback clause.

Q. Well, isn't it true, Mr. Moock, that you or other representatives of the union at this meeting stated to Mr. Muldoon, Mr. Corry, and Mr. Sobelman, that you did not

condone the work stoppage?

A. That is correct. I said that the manner in which this work stoppage came about I did not agree with, and I also said that in my opinion that when the sun was shining before eight o'clock on Friday, that the line of communications somewhere along the line between Cunard and Murphy Cook-and that was the two companies I was more involved with than any other company in this situation-I said that the line of communication is bad, because when one company right alongside of them could decide to work and another company-and that is why I said about Smith and Monroe being abused by the men, and I told the men that it was not their fault, that in my opinion it was Cunard's fault. And I also said that the decision might. have been made by someone one hundred miles north of here, New York, where it might be still snowing.

And I can remember Mr. Muldoon saying-

Mr. Scanlan: If Your Honor please, I don't believe this [fol. 202] is responsive at all.

Mr. Freedman: You may not like it, but it sure is re-

sponsive.

The Court: Let him go on. Go ahead.

The Witness: I can remember Mr. Muldoon saying, being a stevedore and a steamship agent, "I know the problems that are involved there with the line of communication."

By Mr. Scanlan:

Q. Now, are you finished, Mr. Moock? Have you finished your answer?

A, I think I have stopped.

The Court: Next question.

By Mr. Scanlan:

Q. Now, it is true, however, is it not, that based on what you have just testified to regarding the sunshine and communication that there is nothing in the contract that relates to sunshine.

Mr. Freedman: Objection, Your Honor.

The Court: Sustained.

By Mr. Scanlan:

Q. All right, now, Mr. Moock, is it true that at this meeting you and the other members of the union agreed to tell the men that they should go back to work, that their work stoppage was unauthorized and that you would appear at [fol. 203] the hiring center the next day to inform the men?

A. That is correct, and every morning after Saturday I was there before seven o'clock or around seven o'clock, each

and every morning.

Q. All right, now, Mr. Moock, on Sunday morning where were you? Did you go to the hiring center?

A. Sunday morning, yes, I went to the hiring center first

thing.

Q. What time did you get there?

A. About ten minutes of seven.

Q. And how long did you remain there?

A. Just a few minutes.

Q. And how many men were at the hiring center while you were there?

A. There was some. I wouldn't approximate a guess, because I didn't hang around there too long. I went right back up to 98.

Q. Well, now, just a minute.

A. I would like to qualify what I am saying. I found out that there was three ships working that morning, and I was hoping that the problem was going to be settled right then and there. Being three ships was working, I figured, well, the thing was going to blow over.

Q. Did you talk to the men while you were at the hiring

[fol. 204] center on Sunday, Sunday morning?

A. No, I did not.

Q. You didn't talk to the men?

A. At the hiring center, no, I did not.

Q. You didn't tell the men on Sunday morning that they should return to work?

A. At the hiring center?

Q. Yes.

A. I did not.

Q. But on Saturday at noontime you had promised to tell the men that they should return to work at the hiring center?

A. I promised the men that I-I promised the PMTA people that I would be at 98 the next morning. I said nothing about the hiring center.

Q. Oh, you didn't say that you were going to be at

the hiring center?

A. No, I did not.

Q. Now, did you go to Pier 98?

A. I did.

Q. What time did you get there?

A. A few minutes after seven.

Q. And how many men were at Pier 98?

A. There was a couple hundred there.

Q. Did you talk to these men?

[fol. 205] A. Yes, I did.

Q. What did you tell them?

A. I told them that they should go to work, to settle this thing peaceably.

Q. You told the men that they should go to work?

A. Correct.

Q. Did you tell them that their work stoppage was unauthorized?

A. I told them they should go to work and let us settle

the thing.

Q. I am not asking you that question, Mr. Moock. I am asking you whether or not you told the men that their work stoppage was unauthorized.

A. I am telling you what I told the men is, "You should

return to work and let us settle this thing."

Q. Then I assume that your answer to my question is no.

A. I told the men that they should turn to and let us settle the thing.

Q. Now, were you at the hiring center on Tuesday?

A. On Monday and Tuesday, yes.

Q. What time did you get there on Tuesday?

A. The same time, a little after seven.

Q. And how many men were there when you got there?

A. This morning there was a larger amount than any of the other mornings.

[fol. 206] Q. How long did you remain at the hiring cen-

ter?

A. Offhand I would say on Saturday, Sunday, I was one

of the very last to leave down there.

Q. Mr. Moock, you apparently don't understand my question. I am relating now to the hiring center on Tuesday, which is today.

A. Today?

Q. Yes. How long did you remain at the hiring center today?

A. Probably about quarter after nine.

Q. Now, during that period of time did you talk to the men?

A. Yes, I did.

Q. And where did you talk with these men?

A. On both sides of the gate.

Q. And the gate is located where?

A. Right at the gate at 98; between 98 and 96.

Q. Is that at 98?

A. It is between 98 and 96.

Q. Oh, I thought you said you were at the hiring center.

A. This morning?

Q. Yes.

- A. I went to the hiring center for a short while, and then I came up to 98 I got to 98 a little while after seven o'clock.
- Q. Well, how long were you at the hiring center this morningf [fol. 207] A. Only a few minutes.

Q. And how many men were there when you were there?

A. There was quite a few there.

Q. Did you talk to the men at the hiring center?

A. I did not.

Q. Then you didn't tell any of the men at the hiring. center that they should go back to work?

A. I have never used the microphone down at the hiring

center yet, ever since it was installed.

Mr. Scanlan: I submit that is not responsive, your Honor.

By Mr. Scanlan:

Q. I didn't ask you that question, whether you used the microphone, Mr. Moock. I asked you whether you talked to any of the men at the hiring center this morning and told them they should go back to work.

A. At the hiring center, no. I went to 98, because I am of the opinion that 98 was the problem, and that was where

I was concentrating my efforts.

I do know when I went into the center that there were two or three of the delegates dispatching men each and every morning when I got there, and when I saw them dispatching men, I didn't linger around there too long. I got back in my car and went immediately up to 98. [fol. 208] Q. Now, what time did you arrive at 98?

A. A few minutes after seven.

Q. And how many men were there when you get there?

A. It was in the hundreds, and there was more there this morning, I think, than any other previous day of the week.

Q. Did you talk to any of the men?

A. I talked to quite a number of them, yes..

Q. How many men did you talk to?

A. Offhand I would say I talked to a couple hundred.

Q. Now, what did you tell them?

A. I told them that they should turn to and let us settle this thing.

Q. Did you tell them their work stoppage was unauthor-

ized?

A. I told them they should turn to and let us settle this thing in a peaceful manner.

Q. Then you did not tell them that the work stoppage

was-

- A. I told them to turn to and let us settle this in a peaceful manner.
- Q. Now, Mr. Moock, I show you this telegram, which has been identified as P-3, and ask you if that is your name which appears on that telegram.

A. That is correct.

Q. And did you agree to that telegram before it was sent to Mr. Corry?

[fol. 209] A. That is correct.

Q. And did you agree to this language in the telegram which says that the union will not be entrapped into perpetrating the infamous award of Mr. Weiss?

A. They are not my words.

Q. Did you agree to those words?

A. That is correct.

Mr. Scanlan: That is all. The Court: Any redirect?

Mr. Freedman: No.

The Court: Any more witnesses?
Mr. Freedman: Mr. Joseph Kane.

The Court: How many more witnesses do you have?

Mr. Freedman: Three or four, brief.

The Court: We will recess until tomorrow morning.

Mr. Freedman: Your Honor, I have to leave tonight. Each one of these won't take more than a few minutes. As

a matter of fact, all I intend asking each one of these is the simple question as to whether they were down on the water-front—these are the other officials—whether they exhorted the men to go to work.

We can complete our case in a few minutes.

[fol. 210] The Court: All right, if we can complete in a few minutes. Otherwise, we will have to recess, because I have a commitment.

Mr. Freedman: Well, Your Honor-

The Court: Now, if it is merely corroborative testi-

Mr. Freedman: That is all.

The Court: All right.

Joseph S. Kane, sworn.

Direct examination.

By Mr. Freedman:

Q. Mr. Kane, you are the assistant financial secretary of the union?

A. Yes, sir.

Q. How long have you been on the Philadelphia water-

A. Since October, 1933.

Q. And how long have you held your office?

A. Since January 1, 1954.

Q. Mr. Kane, you are familiar with the present dispute on the Philadelphia waterfront, are you not?

A. Yes, sir.

Q. Have you in connection with that dispute gone down to the waterfront to speak to the men?

[fol. 211] A. Pardon me. sir?

Q. Have you, in connection with that dispute, gone down to the waterfront to speak to the men?

A. Yes, sir.

Q. Will you tell us what you said to them?

The Court: I believe Mr. Kane is a bit hard of hearing. Are you?

The Witness: No, sir.

The Court: You didn't seem to grasp Mr. Freedman's question. I thought you were.

Don't talk quite so fast, Mr. Freedman. I think he didn't

grasp your question.

Mr. Freedman: I appreciate Your Honor's suggesting.

By Mr. Freedman:

Q. Mr. Kane, do you understand the question now?

A. Yes.

Q. Would you tell us what you said to the men.

A. Will, I told the men that they should return to work.

Q. And how frequently did you tell them that?

A. Ever since 8:30 Saturday morning.

Q. And were you down there every day?

A. Every day since 8:30 Saturday morning.

Q. And is that something you did with all of the men, [fol. 212] wherever you found them?

A. Yes.

Q. Did you hear other officials of the union doing the same thing?

A. Every single officer did the same thing as myself, side by side and scattered throughout the crowds at different times.

Q. All saying the same thing?

A. Everyone said the same thing.

Mr. Freedman: Cross examine.

Cross examination.

By Mr. Scanlan:

Q. Mr. Kane, did you attend a meeting Saturday afternoon in Mr. Corry's office?

A. Yes.

Mr. Freedman: Objection. It is beyond the scope of the direct examination.

The Court: We will allow that question, but nothing beyond that. We have the testimony of the various persons about that.

By Mr. Scanlan:

Q. Isn't it true that at that meeting it was said the work stoppage was unauthorized?

Mr. Freedman: Did Your Honor say you would not permit any further questions along this line? [fol. 213] The Court: That is right. It is beyond the scope of the direct. We have the testimony of the other witnesses on the subject.

Mr. Freedman: There is no question about that. Every-

body admitted that. In fact, we asserted it.

By Mr. Scanlan:

Q. Now, Mr. Kane, I think you testified then in direct examination that you have been down on the waterfront every day since Saturday at noontime.

A. Since Saturday at 8:30 in the morning.

Q. Since Saturday at 8:30 in the morning, and you have been there all day long telling the men to go back to work; is that right?

A. No, I have left the waterfront at various times. We left the waterfront to go meet with Mr. Corry Saturday.

Q. Well, let's take it now from Sunday. Did you go down to the hiring center on Sunday?

A. No, sir, I went to Pier 98.

Q. What time did you get to Pier 98?

A. Five or ten minutes after seven o'clock in the morning.

Q. This is on Sunday morning?

A. Yes, sir.

Q. Now, how many men were there when you got there?

A. I didn't count them, sir.

[fol. 214] Q. Well, give us your best estimate.

A. I am very poor at judging crowds. I couldn't exactly say how many were there.

Q. You mean you don't know whether there were more than five men there or a hundred?

A. I know there were more than five, yes.

Q. Was there a hundred?

A. Much more than a hundred, I would guess.

Q. Was it two hundred?

A. I have no idea.

- Q. Well, now, you talked to the men at Pier 98, did you not?
 - A. Everyone that I could make myself in contact with.

Q. Now, how many men did you talk to?

A. Sunday morning I would guess that I talked to at least a hundred.

Q. And what did you say to these men?

A. I told them that they should return to work and leave it up to the officers to settle this thing in a proper way.

Q. Did you tell them that their work stoppage was un-

authorized?

A. No, sir, I told them that they should return to work and leave it up to the officials of the union to settle this thing in a proper way.

Q. And that is all you said to the men; is that right?

A. I have said that over and over again.

[fol. 215] Q. All right, let's take Monday. Did you appear at the hiring center on Monday?

A. Yes, sir.

Q. What time did you get there?

A. Five minutes after seven in the morning.

Q. How many men were there when you got there?

A. Mr. Scanlan, if you are familiar with the hiring center, the hiring center is a pretty large place, and the people are scattered in back of the poles, staying in their cars, and go in all different directions. I wouldn't be able to tell you any more than anybody else could tell you how many men were there.

Q. I am just asking for your best estimate, Mr. Kane.

A. I would say Monday morning well over a thousand men there, if I was to take a guess.

Q. All right, now did you talk to any of the men at the

hiring center on Monday morning?

A. Many of them.

Q. And did you talk to them on the inside of the building or the outside?

A. No, sir, I didn't go inside the building until everybody started to scatter. I went through the whole crowd talking to them, telling them they should go to work.

Q. You talked to them on the outside then; is that right? [fol. 216] A. Yes, sir; Monday morning men get on the buses and everything else and left the hiring center to go to work.

Q. Now, you didn't use the microphone at the hiring center, did you?

A. I wasn't in the building, never did use the microphone.

Q. Now, what did you tell these men on Monday morning?

A. I told them that they should return to work and leave it up to union officials to settle this problem in a proper wav.

Q. Did you tell them that their work stoppage was unanthorized?

A. No, sir, I told them that they should return to work and leave it to the union officials to settle this problem.

Mr. Freedman: Your Honor, this is the third time. I don't know what is to be accomplished. I am going to object for no other reason than repetition, Your Honor.

The Court: I think we have all of this, Mr. Scanlan.

Mr. Scanlan: All right, then I will just ask him one other question.

By Mr. Scanlan:

Q. Were you at the hiring center today?

A. Yes, sir.

Q. What time did you get there?

A. Also at Pier 98.

Q. And also at Pier 98?

[fol. 217] A. Yes.

Q. Did you talk to the men?

A. Yes.

Q. What did you tell them?

A. I told them that they should return to work and Stewart Sobelman stood beside me while I did it.

Q. Is that all you told them?

A. I told them they should return to work and leave it up to the union officials to settle this problem in a proper way.

Mr. Scanlan: I see. That is all.

The Court: Anybody else, Mr. Freedman?

Mr. Freedman: Yes. Mr. Talmadge.

The Court: Will he testify to anything different than Mr. Kane?

Mr. Freedman: Just two more after this one; very brief.

The Court: Will he testify to anything different from Mr. Kane?

Mr. Freedman: Exactly the same.

ALEXANDER TALMADGE, SWOTH.

The Court: Do you want to tell us what this man will testify to?

[fol. 218] Mr. Freedman: Yes. He will testify that he, too, went among the members and vigorously told them to go back to work and let the matter be resolved by the union officials in the proper channels, under the contract.

The Court: Is that correct?
The Witness: That is correct.

The Court: Is there any reason why you should cross examine?

Mr. Scanlan: No, Your Honor.

The Court: Anything else you want to ask Mr. Talmadge!

Mr. Freedman: No, I think that is about it.

Mr. Devine.

Edward H. Devine, sworn.

Mr. Freedman: Does Your Honor want me to make an offer of proof again?

The Court: Yes.

Mr. Freedman: This witness will testify, too, that he went among the members since this episode started, exhorting them to return to work and to leave the disposition of this matter to the union officials.

The Court: One thing we forgot about Mr. Talmadge.

What does he do? What is he?

[fol. 219] Mr. Freedman: He is a business agent of the union.

The Court: And Mr. Devine?

Mr. Freedman: Same thing, business agent of the union also.

The Court: Mr. Scanlan.

Mr. Scanlan: No reason to cross examine.

Mr. Freedman: These are all union officials I am call ing, Your Honor.

The Court: I wanted to be sure that was on the record. That didn't appear in your offer of proof.

Thank you.

Mr. Freedman: Mr. Huggins, please.

[fol. 220] Norman Huggins, sworn.

Direct examination.

By Mr. Freedman:

Q. Mr. Huggins, what is your position? A. Financial Secretary and Treasurer.

Mr. Freedman: I offer to prove by this witness that he, too, went among the men and urged them to return to work and let the dispute be resolved by the Union officials in a proper manner under the contract.

The Court: Is that correct?
The Witness: That is correct.

The Court: Mr. Scanlan?

Mr. Scanlan: No cross-examination.

Mr. Freedman: Mr. Johnson.

The Court: We didn't ask Mr. Devine—Mr. Devine, where are you—that was correct that you would answer in that manner?

Mr. Devine: Yes, sir.

The Court: All right. Thank you, Mr. Devine.

Mr. Johnson: Johnson.
The Court: Mr. Johnson?

Mr. Johnson: Yes.

[fol. 221] Paul Johnson, Jr., sworn.

Direct examination.

By Mr. Freedman:

Q. Mr. Johnson, what is your position in the Union? A. Business Agent of Local 1291, International Long-shoremen.

Mr. Freedman: I offer to prove by this witness that he, too, went among the men and vigorously urged the men to return to work and let the dispute be resolved by the Union officials under the contract.

The Court: Is that correct, Mr. Johnson?

The Witness: Right, sir. The Court: Mr. Scanlan?

Mr. Scanlan: No cross-examination.

Mr. Freedman: Mr. Carter.

CLIFFORD CARTER, SWOTH.

Direct examination.

By Mr. Freedman:

- Q. What is your position in the Union, Mr. Carter?
- A. I am Atlantic Coast District Vice-President.
- Q. Of the International?
- A. That is correct.
- Q. Are you familiar with this dispute?
- A. Yes, sir.

[fol. 222] Mr. Freedman: I offer to prove by this witness, sir, that he, too, went among the men and urged them to return to work and let the dispute be resolved by the Union officials.

The Court: Is that correct, sir?
The Witness: That's correct, sir.
Mr. Scanlan: No cross-examination.
Mr. Freedman: That's our case, sir.

The Court: Any rebuttal?

Mr. Scanlan: No rebuttal, Your Honor.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Anything you want to say, because I am going to retire for about five or ten minutes and come in and tell you what I think

Mr. Freedman: Well, Your Honor, frankly, I am at a loss now-

The Court: Something that you haven't said before. You made your position very clear.

Mr. Freedman: I really don't know what to address myself to because I don't know what it is we are being charged with. Are we being charged because we want to arbitrate or because we asked to invoke the provisions or are we being charged for something else! I specifically don't know what they are charging us with.

I may say to Your Honor that we have been shooting in the dark here now, trying to guess at what may be [fol. 223] an issue, but I don't know. I would like to have it pinpointed. What are they charging us with and what is it that Your Honor considers here to be the pertinent factors, both from the legal standpoint and from the factual standpoint?

I would like to hear from Mr. Scanlan where he thinks the Union is involved. I think we are entitled to know

that. I think we are entitled to have it on paper.

The Court: Mr. Scanlan I think made his position very clear yesterday.

Mr. Freedman: Well, I wasn't here yesterday.

The Court: Well, your partner was.

Mr. Freedman: Today is the hearing, Your Honor.

The Court: No, you can't send somebody and say "I didn't know what was going on."

Mr. Freedman: Your Honor, what he said doesn't matter. He has to put it in the pleadings. This is the contempt.

The Court: All right, Mr. Scanlan, take over. You can

say in a few minutes what you want to say.

Mr. Scanlan: If Your Honor please, I just/want to say that it is quite obvious what has happened. We thought that the Union was going to do everything that it could to get the men to go back to work until they sent [fol. 224] these telegrams on Monday and asked for this matter to be re-arbitrated and castigated the award of Mr. Weiss as an infamous award and said they were not going to perpetrate it and then the witnesses have admitted on the stand that while they went down and told the men to go back to work, they didn't tell the men that the work stoppage was unauthorized, and I don't know how we can get these men to go back unless they realize that their work stoppage is unauthorized.

It is one thing for the Union to say that the work stoppage is unauthorized and illegal in Mr. Corry's office, but the men who have to hear this are the men down on the waterfront, and the people who have to tell them this are the officials of the Union, and this is something that they have failed to do, and in failing to do that, they have shown that they do not intend to abide by the arbitrator's award which was the essence of the order which Your Honor issued here. The order of Your Honor specifically enforced the arbitrator's award and decreed that the Union should comply with and abide by this award.

Now, Mr. Askew has testified on the witness stand that he considers it to be a ridiculous award, and it is quite obvious that if somebody considers the award to be ridiculous, they do not intend to comply with and to abide

by it, and I think—

[fol. 225] The Court: I understand your position.

Anything else you want to say, Mr. Freedman?

Mr. Freedman: Yes, I would like to reply to that, if

Your Honor please.

Well, it is apparent now that it is conceded that the Union did do everything that it could possibly have done under the circumstances in order to get the men to try to go back to work, to get back to work until Monday when, by the filing of this telegram asking for a grievance meet-

ing, this changed the picture.

In other words, he places his whole case on this telegram in which we ask for a grievance meeting. Now, I submit to Your Honor that this is a perfectly proper and a perfectly legal thing to do. As a matter of fact, the Union was under an obligation to do it and it did it. It filed a protest or a request for grievance as required by the contract regardless of anything else.

Your order certainly doesn't—at least as I read your order—doesn't prohibit, proscribe grievances. Apparently, now, the whole case revolves on this, and I think it is absurd to suggest for one second as Mr. Scanlan does that it is illegal to ask for a grievance where there is a dispute, and I don't care what the decision might have been before, even if we were conceding the decision before, we would

[fol. 226] still have a right to ask for a grievance, a grievance meeting and even arbitration, if a dispute arose.

The Court: Anything else, Mr. Scanlan?

Mr. Scanlan: No, Your Honor, I have nothing further.

(A short recess was taken at 6.25 P. M.)

DECISION AND CONTEMPT ORDER-March 1, 1966

The Court: Gentlemen, this is a difficult case and one

involving men who work on the docks.

We have an agreement and it is alleged that that agreement was violated. The matter came before me after the arbitration, after the arbitrator, Mr. Weiss, decided against the Union and its contention. The opinion of the arbitrator, Mr. Weiss, was upheld and I issued an order on September 15, 1965 enforcing that order.

Here we have men hired to do work and then they refuse under the conditions mentioned. They stop work

and influence others not to report.

Both sides, of course, have a right to be here. That's

the purpose of this Court.

I have heard the evidence presented and the arguments thereon. As long as the Union is functioning as a union, it must be held responsible for the mass action of its mem-[fol. 227] bers. That means this: When the members go out in the manner in which they did and do an illegal act, the Union is responsible. They can't say, "We didn't do that as Union members." If members of the Union—then they do act under the laws of this country—if it is a mass action, the Union is responsible, and that's what we have here. It is a mass action along the Philadelphia waterfront, and it is illegal to strike under the circumstances, so the Union cannot escape responsibility on the basis that a leader or some of the leaders urged a man or some men or many men to return to work, but they did not return to work.

So in my opinion the Union in effect approved what was. done and must be held responsible. They violated the order of this Court and therefore shall be adjudged in civil

contempt. I hold the Union, the officers and the men who participated responsible in contempt of court and at this time civil contempt only.

The fine against the Union will be \$100,000 per day ef-

fective this date at 2:00 P. M.

Mr. Freedman: What is that?

The Court: The first payment to be made-

Mr. Freedman: Would Your Honor read that last part back?

The Court: The fine against the Union will be \$100,000 [fol. 228] per day.

Mr. Freedman: One hundred?

The Court: \$100,000, effective this date, 2:00 P. M., the first payment to be made within 24 hours to the Clerk of the United States District Court, and every thereafter (sic) as long as the order of this Court is violated.

There will be a further hearing on this matter in the event that anything is desired to be presented by either or both counsel, and I will reserve the time, Monday at

2:00 P. M.

Exception noted.

(Concluded at 6:45 P. M.)

[fol. 229]

IN UNITED STATES DISTRICT COURT

EXHIBIT R-2

MEMBERS OF LOCAL 1291, I.L.A.

Because several companies pushed back gangs on Friday, February 25, 1966, those gangs refused to turn to that afternoon at 1:00 P.M. and also the same gangs refused to turn to on Saturday morning, February 26th.

These men then proceeded to go to the piers throughout the Port and knock off about forty other gangs that

were working.

This protest by our members grew out of resentment to a ruling made by Milton M. Weiss, Arbitrator, that the

employers could invoke the push back for any reason whatsoever.

All of your officials, including our International Vice President, Mr. James T. Moock, fought vigorously in the arbitration proceeding in an effort to persuade the arbitrator as to the true intent of the negotiators. Nevertheless he did rule against us.

When Mr. Weiss made this ruling, all of your officials felt that his decision was a flagrant miscarriage of justice. Our feelings have not changed one iota since that time. We were convinced, and we remain convinced, that the Arbitrator's decision did not represent the intent of the negotiators.

We know, and all of our men know, that there are arbitration provisions in every labor contract of any importance and we also know that an arbitrator, like any other judge, is not infallible and will make some good decisions and some bad decisions. Since we are governed by the rule of law we must accept these decisions until they are reversed—or run the risk of getting into serious trouble.

We are taking an appeal from the Arbitrator's ruling with the hope that we can get it set aside or modified to the extent that our men will not have to come to a ship at 8:00 o'clock in the morning and then be told that they are pushed back until 1:00 o'clock.

We never intended that kind of thing in the negotiations and we do not believe that we did not convince the Arbitrator of that fact.

The following named I.L.A. officials urge all of our men to return to work and allow this dispute to be settled through proper channels.

James T. Moock, International Vice President CLIFFORD CARTER, A.C.D. Vice President RICHARD ASKEW, President Local 1291 JOSEPH S. KANE, Asst. Fin. Sec'y. NORMAN HUGGINS, Sec'y.-Treas. JOHN SMITH, Business Agent PAUL JOHNSON, JR., Business Agent ALEX TALMADGE, Business Agent EDWARD DEVINE, Business Agent

[fol. 230] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 231]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 38647

Philadelphia Marine Trade Association, a non-profit Delaware corporation, Bourse Building, Philadelphia, Pennsylvania, Plaintiff,

VS.

International Longshoremen's Association Local 1291, Lafayette Building, Philadelphia, Pennsylvania, Defendant.

MOTION FOR HEARING TO FIX AMOUNT OF FINE AND TO ENFORCE JUDGMENT OF CIVIL CONTEMPT

The motion of plaintiff, Philadelphia Marine Trade Association, respectfully represents as follows:

1. On March 1, 1966, by an order of this Court the defendant was adjudged in civil contempt for violating an order of this Court entered on September 15, 1965 and was ordered to pay a fine of One Hundred Thousand (\$100, 000.00) Dollars per day effective at 2:00 P. M., on March 1, 1966. The first payment was to be made within twenty-four hours to the Clerk of the United States District Court and a similar payment was to be made for each day thereafter as long as the order of this Court was violated.

- [fol. 232] 2. No payment of the said fine has been made to the Clerk of the United States District Court.
- 3. On March 2, 1966 defendant filed a notice of appeal with the United States Court of Appeals for the Third Circuit and also filed a motion with that Court for a stay of execution of this Court's contempt order without the posting of a supersedeas bond.
- 4. On March 9, 1966 the United States Court of Appeals for the Third Circuit entered an order denying defendant's motion for a stay of execution of the said contempt order without a supersedeas bond and granted a stay of the said order upon the filing of a supersedeas bond in the amount of Fifty Thousand (\$50,000.00) Dollars. A copy of the Court's order is attached hereto, made a part hereof and marked Exhibit "A".
- 5. No supersedeas bond has been filed in accordance with the said order of the Circuit Court of Appeals.

Wherefore, plaintiff requests this Court to set a hearing for the purpose of fixing the amount of the fine owed by the defendant and enforcing the judgment against the defendant for civil contempt.

Respectfully submitted:

Kelly, Deasey & Scanlan, By Francis A. Scanlan, Attorneys for the Plaintiff. [fol. 233]

EXHIBIT A TO MOTION

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 15804

PHILADELPHIA MARINE TRADE ASSOCIATION,

VS

International Longshoremen's Association, Local 1291,

Appellant.

(D. C. No. 38647 Civil)

Present: Smith and Freedman, Circuit Judges, and MILLER, District Judge.

Upon consideration of the motion by appellant, and of the answer by appellee, and after hearing,

It is Ordered that the motion for say of execution of the contempt order without supersedeas bond be and it hereby is denied;

It is Further Ordered that upon the filing of a supersedeas bond in the amount of fifty thousand dollars (\$50,-000.00), with surety or sureties to be approved by the Clerk of the District Court, the execution of the District Court contempt order entered on the docket March 2, 1966 be stayed, pending the ultimate disposition of the above entitled appeal.

By the Court,

/s/ ABRAHAM L. FREEDMAN Circuit Judge

Dated: March 9, 1966

[fol. 234]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 38647

Philadelphia Marine Trade Association, a non-profit Delaware corporation, Bourse Building, Philadelphia, Pennsylvania, Plaintiff,

VS.

International Longshoremen's Association Local 1291, Lafayette Building, Philadelphia, Pennsylvania, Defendant.

ORDER-March 25, 1966

And Now, To Wit this 25th day of March, 1966 upon consideration of the motion of plaintiff, Philadelphia Marine Trade Association, it is hereby ordered, adjudged and decreed that a hearing shall be held on the 13th day of April, 1966 at 2:00 P. M., for the purpose of fixing the amount of the fine owed by the defendant and enforcing the judgment of this Court against the defendant for civil contempt.

By the Court

Ralph C. Body, J.

[fol. 235]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 15804

PHILADELPHIA MARINE TRADE ASSOCIATION,

V.

International Longshoremen's Association, Local 1291, Appellant.

APPEAL FROM ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

> Argued June 14, 1966 Reargued September 29, 1966

Before Ganey and SMITH, Circuit Judges, and KIRK-PATRICK, District Judge.

OPINION OF THE COURT—Filed November 17, 1966

By Kirkpatrick, District Judge.

This is an appeal from an order of the District Court holding the defendant union in contempt for violation of a previous order of the court. The order (affirmed by this court August 11, 1966) which was the basis of the contempt proceeding, directed the union to comply with an arbitration award in a dispute as to the proper interpretation of a term of its collective bargaining agreement with the Marine Trade Association. Sometime after the entry of [fol. 236] that order, a widespread work stoppage closing

[File endorsement omitted]

the Port of Philadelphia occurred because the men were dissatisfied with the arbitrator's award.

The Court, at 6:45 P.M. on March 1, after hearing, held the union responsible for the mass action of its members, adjudged it to be "in civil contempt only" and imposed a fine of "\$100,000 per day effective this date at 2:00 P.M." (the time when the hearing began) "the first payment to be made within 24 hours . . . and every thereafter (sic) as long as the order of this Court is violated." The record made before the trial court fully justifies the Court's finding that the mass action of the members of the union was, in fact, the action of the union. The union appealed the next day.

The character of the order, whether for civil or criminal contempt, was the subject of a reargument in this court. Of course, the fact that the judge called his action a judgment in civil contempt, though persuasive, is not conclusive. However, under the rule laid down by the Supreme Court in Shillitani v. United States, June 6, 1966, the judge was clearly right.

In the Shillitani case the court announced a perfectly clear, simple, and easily applied test for determining whether a penalty imposed in a contempt proceeding is for a civil or criminal contempt. The court said, "The test may be stated as: what does the court primarily seek to accomplish by imposing sentence?" It seems that in this case there can hardly be much doubt that the judge was primarily, if not solely, seeking to put an end to the strike, and that he may have had in mind some thought of punishment as well does not affect the nature of the proceeding.

The fact that the order of \$100,000 per day was made "effective" at a time more than four hours past, with the first payment not due until the following day, is no indication that its purpose was punitive rather than coercive—rather the contrary. It would be hard to think of any good reason why the judge, if he was imposing a fine solely [fol. 237] as a punishment for a criminal offense, would date it back. On the other hand, it would be entirely logical

for the judge in this case to fix a past hour as the effective date of his order so as to give a starting point for the first 24-hour period at the end of which the first payment was to be made.

Of the several points raised by the appellant the only one which merits extended notice is the contention that the union was entitled to a trial by jury and that the Court's refusal to comply with a written demand therefor was a deprivation of due process. Plainly, due process is not involved. What is involved, however, is whether it was error to deny the union a jury trial.

Title 18 U.S.C. 3692, upon which the union bases its claim to a right of trial by jury, was originally a part of the Norris-LaGuardia Act. The union contends that it applies to all contempt proceedings growing out of a labor dispute but, on its face, it applies only to cases of contempt for violation of certain injunctions or restraining orders.

The order under review is not an injunction or a restraining order but an order under Section 301 of the Labor Management Relations Act, 29 U.S.C. 185, for specific performance of the bargaining agreement which made the award final and binding. This court has already so ruled. Nor does it involve or grow out of a labor dispute. There was a labor dispute between the plaintiff and the union, but it had been settled by the arbitrator's award in accordance with the bargaining agreement and was no longer alive. The order arose not from the labor dispute but from the union's conduct in failing to carry out the Court's order.

Moreover, Congress in 1948 took the subject matter of 3692 out of the Norris-LaGuardia Act and made it a part of the criminal code. The natural inference to be drawn from [fol. 238] that action is that Congress intended the protec-

[&]quot;In all cases of contempt arising under the law of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial july."

tions provided by 3692 to be accorded to defendants in criminal proceedings and that that section is simply not applicable in cases of civil contempt in which the court is seeking only to obtain compliance with an order.

The order of the District Court will be affirmed.

[fol. 239]

IN THE UNITED STATES COURT OF APPEALS.

FOR THE THIRD CIRCUIT

No. 15,804

PHILADELPHIA MARINE TRADE ASSOCIATION, VS.

International Longshoremen's Association, Local 1291, Appellant.
(D. C. Civil No. 38647)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: Ganey and Smith, Circuit Judges, and Kirk-patrick, District Judge.

JUDGMENT-November 17, 1966

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the District Court rendered orally in open court March 1, 1966 and in transcript filed March 2, 1966 be, and the same is hereby affirmed, with costs.

[File endorsement omitted]

[fol. 240]:

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 15,804

[Title omitted]

ORDER DENYING PETITION FOR REHEARING— Dated January 6, 1967

Present: Staley, Chief Judge, McLaughlin, Kalodner, Hastie, Ganey, Smith, Freedman, Seitz, Circuit Judges, and Kirkpatrick, District Judge.

The petition for rehearing filed by International Long-shoremen's Association, Local 1291 in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

William F. Smith, Judge.

[File endorsement omitted]

[fol. 241]

Supreme Court of the United States

No. 1218—October Term, 1966

· International Longshoremen's Association, Local 1291, its officers and members, Petitioners,

PHILADELPHIA MARINE TRADE ASSOCIATION.

ORDER ALLOWING CERTIORARI-May 22, 1967

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is placed on the summary calendar and set for oral argument immediately following No. 892.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office-Supreme Court, U.S. FILED

DEC 21 1966

IN THE

COURT IES

LERARY

JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1966.

No. 892 34

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,

Petitioner,

PHILADELPHIA MARINE TRADE ASSOCIATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

ABRAHAM E. FREEDMAN,
MARTIN J. VIGDERMAN,
FREEDMAN, BOROWSKY AND LORRY,
8th Floor, Lafayette Bldg.,
Philadelphia, Penna. 19106

Counsel for Petitioner.

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Supreme Court of the United States.

October Term, 1966.

No.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,

Petitioner.

12.

PHILADELPHIA MARINE TRADE ASSOCIATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Local 1291, International Longshoremen's Association, respectfully prays that a Writ of Certiorari issue for review of the final judgment of the United States Court of Appeals for the Third Circuit, entered in the above-entitled matter on September 22, 1966.

OPINION AND ORDERS OF THE COURTS BELOW.

The District Court for the Eastern District of Pennsylvania issued no opinion; the Order of said Court, unreported, is printed as Appendix B hereto (p. 4a). The opinion of the Court of Appeals for the Third Circuit, reported at — F. 2d —, is printed as Appendix C hereto (p. 5a). The Judgment of said Court of Appeals is printed as Appendix D hereto (p. 18a). The Order of the Court of Appeals denying rehearing is printed as Appendix E hereto (p. 19a). The Order of the District Court for the Eastern District of Pennsylvania, holding petitioner in contempt and levying fine is printed as Appendix F hereto (p. 20a).

JURISDICTION.

The judgment of the Court of Appeals was entered on August 11, 1966 (infra, p. 18a). The order denying rehearing was entered on September 22, 1966 (p. 19a). The jurisdiction of this Court is invoked under 28 U. S. C., section 1254(1).

QUESTIONS PRESENTED.

Where an arbitrator's decision simply interpreted a provision of a collective bargaining agreement, and the District Court entered an order requiring that decision "be specifically enforced" and, in response to an inquiry by counsel for clarification, the District Judge refused to state whether that order enjoined any strike or work stoppage but thereafter held the union in contempt and imposed an extraordinary and confiscatory fine when the union members engaged in a work stoppage:

- (a) was not the District Court's order in direct conflict with this Court's decision in Sinclair Refining Co. v. Atkinson, 370 U.S. 195, which holds that the District Court is deprived of jurisdiction by the Norris-LaGuardia Act, 29 U.S. C. A. 104 to enforce an arbitrator's award, if the effect of the Court's order is to enjoin a strike or work stoppage?
- (b) did not the District Court commit such serious, prejudicial error as to require intervention by this Court, where it ignored and showed a complete disregard for the Federal Rules of Civil Procedure and particularly where it failed to clarify and state the reasons for its restraining order, as required by F. R. C. P. 65(d), and where it failed to make findings of fact and conclusions of law as required by F. R. C. P. 52(a), and thereafter held the union in contempt of its unclear and unexplained order?

STATUTES AND RULES INVOLVED.

The statutory provisions and rules involved are: Norris-LaGuardia Act, Section 4, 29 U. S. C. A. 104, Supreme Court Rule 19, Federal Rules of Civil Procedure 52(a) and 65(d).

STATEMENT OF THE CASE.

· On April 26, 1965, T. Hogan Corporation and several other Philadelphia stevedoring concerns in contractual relationship with petitioner union, after having hired longshoremen for an 8:00 A. M. start, changed the starting time to 2:00 P. M. because of inclement weather, and offered one hour of guarantee time for the loss of the morning's employment, under the "set back" provision of the con-The union claimed, inter alia, that the inclement weather clause 2 applied, which provided for a four-hour guarantee. The matter was submitted to arbitration, and the arbitrator ruled that the "set back" clause standing by itself gave the employer the right to set the employment back without qualification. He refused to consider the inclement weather clause or any other provision of the agreement.3 This was the sum total of the arbitrator's award. It was not accompanied by any order to return to work.

On July 29, 1965, another dispute arose when Nacirema Operating Co., another employer, not involved in the earlier dispute, changed the starting time because of inclement weather, and offered a one-hour guarantee under the set back clause instead of the four-hour guarantee under the inclement weather clause. The union demanded arbitration, as required by the contract, but the employer frustrated the

^{1.} Section 10(6) of settlement memorandum—page 12a of appellant's appendix.

^{2.} Section 9(h), page 11, of Longshoremen's Agreement—Exhibit B of appellant's appendix.

^{3.} The arbitrator refused to hear arguments when the evidence was concluded, nor would he receive briefs from the parties. He made his ruling on the "set back" clause, as though it was the sole agreement between the parties.

^{4. &}quot;All disputes of any kind or nature whatsoever arising under the terms and conditions" of the collective bargaining agreement were required to be submitted to arbitration—Section 28, p. 17—of Exhibit B, even when the identical issue is involved (Opinion of Arbitrator, April 19, 1955).

arbitration by bringing the instant action to make the arbitrator's decision in the earlier dispute applicable to all future disputes without further arbitrations, contrary to the express language of the arbitration clause in the agreement, and to the past practice, and to restrain work stoppages in connection therewith. The District Judge held that the suit was moot, because the men had returned to work (77a, 106a). He denied the union's motion to dismiss the complaint for lack of jurisdiction, and for mootness, and "retained jurisdiction" of the case so that if "anything arises", he would "handle it at that time" (57a-58a).

A new dispute arose on September 13, 1965, when a new group of employers recessed the morning's employment because of inclement weather, and offered only the one-hour guarantee under the set-back clause. The union claimed the four-hour guarantee under the inclement weather clause. The employers refused and "reported" ex parte to the District Judge, who scheduled a hearing on the basis of the "facts" reported. The union moved that the "facts" be pleaded as required by the Federal Rules of Civil Procedure. This motion was denied. The union repeated the motion to dismiss for lack of jurisdiction. This, too, was denied. The hearing proceeded on the "facts" reported to the Judge. At the conclusion of the

^{5.} Counsel cited this Court's decision in Sinclair Refining Co. v. Atkinson, 370 U. S. 195, but the Court summarily denied the motion without examining the decision (106a).

^{6.} The Court thereby also ignored this Court's decision in Amalgamated Assn., etc. v. Wisc. E. R. B., 340 U. S. 416, 95 L. Ed. 389 (1951), which held that mootness deprived a Federal court of jurisdiction and required a dismissal of the complaint. See Todd v. Joint Apprent. Committee, 332 F. 2d 243, 247 (7th Cir. 1964). Even if a court may once have had jurisdiction, it cannot extend its power over the parties as to later disputes in perpetuity. De Korwin v. First National Bank, 84 F. Supp. 918, 924-25 (N. D. Ill.), affd. in part, rev. in part on other grounds, 179 F. 2d 347 (7th Cir. 1949). This action, itself in violation of specific precepts of this Court, must be reviewed and reversed.

hearing, the Court entered the order requiring that the arbitrator's award "be specifically enforced" and that the union "comply" with said award. Since the arbitrator's award simply construed Section 10(6) of the agreement, union counsel requested clarification and particularly to determine whether the Court's order restrained a strike or work stoppage. The Court flatly refused to amplify his order and to make findings, as required by the Federal Bules of Civil Procedure. Since the order was actually

"THE COURT: I will sign this order.

"MR. FREEDMAN: Well, what does it mean, Your Honor?

"THE COURT: That you will have to determine, what it means.

"Mr. Freedman: Well, I am asking. I have to give my client advice and I don't know what it means. I am asking Your Honor to tell me what it means. It doesn't—

"THE COURT: You handled the case. You know about it.
You are arguing it doesn't fit into this case.

"Mr. Freedman: I am telling you very frankly now I don't know what this order means, this proposed order. It says, 'Enforcement of the award.' Now, just what does it mean? Are we being restrained from a work stoppage? . . ."

"THE COURT: The Court has acted. This is the order.

"MR. FREEDMAN: Well, won't Your Honor tell me what it means?

"THE COURT: You read the English language and I do.

"Mr. Freedman: I will ask you, but it doesn't say it. I can't understand it. I am telling Your Honor I don't understand it. Now, perhaps Your Honor can explain it to me. Does this mean that the union cannot engage in a strike or refuse to work or picket?

"THE COURT: You know what the arbitration was about. You know the result of the arbitration.

"Mr. Freedman: The arbitration here was under a specific set of facts, involved an interpretation of the contract under a specific set of facts, and he made that interpretation. Now, how do you enforce it? That case is over and done with. These are new cases. Your Honor is changing the contract of the parties

^{7.} The record shows a determined effort by counsel for clarification, and an even greater determination by the District Judge to keep defendants in the dark (143a-144a):

intended to restrain a work stoppage, it should have spelled out in specific and unequivocal terms the activities restrained.

on February 24, 1966, another dispute arose when the employers again refused to pay the four-hour guarantee when they changed the starting time because of inclement weather. This time a group of the longshoremen went out in a "wildcat" strike, refusing to heed the pleas of their own leaders that they wait and give the union another opportunity to have the latest dispute arbitrated. The District Judge held a hearing 8 on a contempt charge and, although the evidence established without dispute that it was a "wildcat" strike, the Judge held the union in contempt for the "mass action" of the members and fined the union \$100,000.00 per day for each day of the work stoppage.

when you foreclose them from going to arbitration on this point again.

"THE COURT: I have signed the order. Anything else to come before us?

"Mr. Freedman: I know, but Your Honor is leaving me in the sky. I don't know what to say to my client."

8. The District Judge denied a motion for a jury trial under 18 U. S. C. A. 3692 which specifically provides for a jury trial in all cases involving "labor disputes".

When the union requested arbitration, the employers seized on this request as a violation of and contempt for the Court's order.

REASONS FOR GRANTING THE WRIT.

I. The Decision Below Is in Direct Conflict With the Holding of This Court in Sinclair Refining Co. v. Atkinson, 370 U. S. 195, and With the Norris-LaGuardia Act, Because It Did, in Fact, Enjoin a Work Stoppage Arising Out of a Labor Dispute.

There is no doubt that a Federal court is without jurisdiction to issue an order which will enjoin a work stoppage. The Court below concluded, however, that the order of the District Judge was "not an injunction", that it could not "be reasonably construed as a restraining order", and that "it simply calls upon the defendant for specific performance of the Arbitration Award." The bare, undisputed fact is, however, that it did enjoin a work stoppage and the union was held in contempt solely because of a work stoppage. Regardless of the label placed upon the order by the Court below, it was, in fact, a labor injunction and, thus, breached the Norris-LaGuardia Act, 29 U. S. C. A. 104, as was specifically held by this Court in Sinclair Refining Co. v. Atkinson, 370 U. S. 195, 8 L. Ed. 2d 440 (1962).

The question here presented to this Court is whether the law will look to substance and effect to determine the nature of a judicial act, or will be blinded by its wrappings. There is no doubt from the facts leading up to the order and from the manner in which it was enforced by contempt and fine that it was requested, litigated and issued specifically to enjoin a work stoppage. The intent and policy of the Norris-LaGuardia Act may not be defeated by calling a labor injunction by another name.

In Sinclair, as here, a complaint was filed under Section 301 of the National Labor Relations Act, 29 U. S. C. A. 185(a), alleging a contract which provided for compulsory arbitration and, also, prohibited work stoppages. Sinclair sought an order enjoining work stoppage. This Court held that Section 4 of Norris-LaGuardia Act "withdraws juris-

diction from the federal courts to issue injunctions to prohibit the refusal to perform work or remain in any relation of employment in cases involving any labor dispute." This Court there also specifically held that Section 301 of the Labor Act, in gaving courts jurisdiction of suits for breach of collective bargaining agreements, did not impliedly repeal Norris-LaGuardia. Analyzing and discussing the relation between Norris-LaGuardia and contracts providing for arbitration and containing no-strike clauses, the opinion fully disposed of contentions of the employer there, echoed in this case, that since Section 301 of the Labor Act came after Norris-LaGuardia, it thereby put Federal Courts "back into the business" of issuing injunctions against work stoppages (370 U.S. at 213-14, 8 L. Ed. 2d at 451-52). This Court made it clear that Norris-LaGuardia is, today, as vital a prohibition of the labor injunction, however it may be termed, as it ever was (370 U.S. at 203-04, 8 L. Ed. 2d at 446-47).

The Court below extracted that part of the Sinclair. decision which provides that Norris-LaGuardia does not prohibit a court order which compels the parties to go to arbitration and, on this basis, sustained the order of the District Court which "enforced" the arbitrator's award. What the Court below failed to recognize in Sinclair was that "enforcement" of the arbitration award where it enjoined a work stoppage is an entirely different matter from an order compelling arbitration, and it was specifica proscribed by Norris-LaGuardia. The Court below not only stopped short of the significant part of the Sinclair opinion, but the language relied on demonstrates, on its very face, that this Court was there discussing enforcement of agreements to go to arbitration, not enforcement of an arbitrator's award, which must still meet the test of Norris-LaGuardia: an arbitrator's award will not be "enforced", said this Court, if it would violate the Norris-LaGuardia Act by having the effect of enjoining a work stoppage.

Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 1 L. Ed. 2d 972 (1957), and United Steelworkers v. Warrior and Gulf Navigation Co., 363 U.S. 574, 4 L. Ed. 2d 1409, also cited by the opinion below, held that parties may be compelled to submit arbitrable issues to arbitration in accordance with an agreement, and that the merits of such an issue are for the arbitrator. Both of these cases were similarly invoked in the Sinclair case as standing for the principle proposed by the Court below in this case. This Court in Sinclair quickly and with no reservation answered and disposed of these very contentions. It pointed out that in Lincoln Mills it had merely held that an order compelling the parties to submit to arbitration as agreed was not within the proscription of the Norris-LaGuardia Act. However, this Court was emphatic in stating (370 U.S. at 212, 8 L. Ed. 2d at 451):

"In upholding the jurisdiction of the federal courts to issue such an order against a challenge based upon the Norris-LaGuardia Act, the Court pointed out that the equitable relief granted in that case—a mandatory injunction to carry out an agreement to arbitrate—did not enjoin any one of the kinds of conduct which the specific prohibitions of the Norris-LaGuardia Act withdrew from the injunctive powers of United States courts. An injunction against work stoppages, peaceful picketing or the non-fraudulent encouraging of those activities would, however, prohibit the precise kinds of conduct which subsections (a), (e) and (i) of § 4 of the Norris-LaGuardia Act unequivocally say cannot be prohibited."

This Court, in Sinclair, specifically decided the issue here involved, reaching the exact opposite conclusion from the Court below. In Sinclair, the employer argued that Lincoln Mills and the Steelworkers cases required this Court to overrule Congress' refusal to repeal or modify the Norris-LaGuardia Act, because "injunctions against peace-

ful strikes are necessary to make the arbitration process effective". This Court completely rejected this argument, emphasizing that Congress had also rejected it (370 U.S. at 213, 8 L. Ed. 2d at 451-52):

". . . To the extent that those cases relied upon the proposition that the arbitration process is 'a kingpin of federal labor policy,' we think that proposition was founded not upon the policy predilections of this Court but upon what Congress said and did when it enacted § 301. Certainly we cannot accept any suggestion which would undermine those cases by implying that the Court went beyond its proper power and itself 'forged . . . a kingpin of federal labor policy' inconsistent with that section and its purpose. Consequently, we do not see how cases implementing the purpose of § 301 can be said to have freed this Court from its duty to give effect to the plainly expressed congressional purpose with regard to the continued application of the anti-injunction provisions of the Norris-LaGuardia Act. The argument to the contrary seems to rest upon the notion that injunctions against peaceful strikes are necessary to make the arbitration process effective. But whatever might be said about the merits of this argument, Congress has itself rejected it. In doing so, it set the limit to which it was willing to go in permitting courts to effectuate the congressional policy favoring arbitration and it is not this Court's business to review the wisdom of that decision." (Emphasis supplied.)

In concluding that Congress, in legislating Section 301 of the Taft-Hartley Act, did not intend to whittle away the effect of the proscription in Norris-LaGuardia, this Court said (370 U. S. at 213-14, 8 L. Ed. 2d at 452) that Section 301 does not conflict with Norris-LaGuardia, so far as concerned the policy "in favor of enforcement of agreements to arbitrate", since it does not impair the employer's right

to obtain an order "compelling arbitration". However, this Court pointedly held, upon the question whether an employer can enjoy the benefits of an *injunction* along with the right to sue for breach of agreement which was given by Section 301:

". . . And as we have already pointed out, Congress was not willing to insure that enjoyment to an employer at the cost of putting the federal courts back into the business of enjoining strikes and other related peaceful union activities." (Emphasis supplied.)

Thus, this Court has made it clear that Norris-LaGuardia deprives the courts of jurisdiction to enter any order which will prohibit a work stoppage. The indirect approach, through an arbitrator, does not change the situation. The sole basis proffered to justify the position below is the existence of Section 301 as a neutralizer of Norris-LaGuardia. But this Court has previously cast this argument aside—permitting Section 301 to be the vehicle for an order only for "specific performance" of an agreement to submit to arbitration—so long as that does not inhibit labor's basic right to stop work. But the indirect approach to the labor injunction, by whatever means, is forbidden. Indeed, this Court made it clear that a Federal Court may not enter any order that would interfere with the rights guaranteed by Section 7 of the Labor Act, which are specifically protected by Norris-LaGuardia.

Since the court lacks jurisdiction to enter an injunction on its own, it certainly lacks jurisdiction to enter an injunction by "enforcement" of an arbitrator's award. In Sinclair, this Court expressly held that Norris-LaGuardia proscribes an injunction in either event. Specifically, said the Court in Sinclair, "the circumstances that the alleged work stoppages and strikes may have constituted a breach of a collective bargaining agreement [does not] alter the plain fact that a "labor dispute" within the meaning of the Norris-LaGuardia Act is involved" (U. S. at 200, L. Ed. 2d at 445).

In the instant case when the first order of the District Court was handed down, its real meaning and what it ordered to be done or not done, was a subject solely for speculation. When the next dispute arose with the accompanying work stoppage, the employer made his ex parte "report" to the District Judge and demanded that petitioner be held in contempt. The union demanded arbitration of the new dispute, but the employer refused. In holding the union in contempt the District Judge specified the activity as a "strike" and "refusal to work", and levied a fine of \$100,000.00 per day until the men returned to work. This Court, in Sinclair, held that it was precisely this kind of activity which was protected by Norris-LaGuardia.

The decision of the Court below would repeal that part of the Norris-LaGuardia Act which deprives the Federal Courts of jurisdiction to enjoin strikes or work stoppages in order to "give effect" to an arbitrator's award. This Court said, in Sinclair, that Congress deliberately kept Norris-LaGuardia intact and did not intend to put the Federal Courts back into the injunction business. The lower court's decision is a clear violation of the Congressional intent and of this Court's decision in Sinclair. Certiorari should be granted and the decision below should be reversed.

II. The Refusal of the District Court to Clarify or Explain the Nature of the Conduct Compelled by Its Mandatory or Prohibitory Order, Upon Specific Request, and to Give Reasons for Its Issuance and Make Findings of Fact and Conclusions of Law, Is in Violation of F. R. C. P. 52(a) and 65(d). Such Action by the District Court, Sanctioned by the Court of Appeals, Is a Prejudicially Substantial Departure From Proper Judicial Procedure, Calling for the Exercise of This Court's Power of Supervision: Rule 19.

The Court below holds that the failure of the District Judge to comply with the Rules of Procedure as to giving reasons for its order and making findings and conclusions "was inconsequential", and was "minor and in no way decisional". This is a gravely erroneous conclusion to reach, in the presence of an ambiguous order which left the union in the dark, and, if enforced, will leave a contempt order standing and the union wiped out by the extraordinary penalty.10

Although the plaintiff and the Courts below have studiously labelled the order below as one of "specific performance of an arbitration award" the real effect of the order and, then, the subsequent contempt order; make it obvious that the order actually was intended and was, in fact, a restraint against work stoppage and, thus, was in clear violation of Norris-LaGuardia. The effort to make its injunction against work stoppage appear to be something else resulted in an order which was ambiguous and confusing. When petitioner's counsel was apprised of the language of this order, he requested clarification, but this was refused.10 If the District Court had complied with Rules 52(a) and 65(d), the real meaning and effect of the order would have been apparent. Instead, petitioner had to await the subsequent contempt order, which demonstrates that the District Judge really was enjoining a work stoppage. The subsequent contempt order need merely be read to demonstrate this (Appendix F, infra).

Rule 52(a) of the Federal Rules of Civil Procedure requires the trial court to support its orders with specific findings of fact and conclusions of law separately stated. In a previous opinion in the Third Circuit, in *Hook v. Hook and Ackerman, Inc.*, 213 F. 2d 122, Chief Judge Biggs vacated an injunction because of this breach of proper procedure. But, in the instant case, the Court below excuses

^{10.} See footnote 7 for the appeal made by petitioner's counsel for clarification.

^{11.} Judge Biggs also stated that the District Judge should also have required the parties "to define the issues presented by clear-cut pleadings which conform with the Federal Rules of Civil Procedure". In the instant case, there is a complete absence of any pleadings whatever concerning the dispute involved.

the District Judge's refusal to comply with the rule by stating that "this is not an injunction suit". But, even if it were not an injunction suit, it was still an action tried without a jury. Thus, the mandatory precept of Rule 52(a) must apply. The Court below then excuses this omission as inconsequential. But, it is most consequential, and prejudicially so. Where findings and conclusions properly expressed would tell a defendant that his refusal to work brought about the order and that a subsequent work stoppage would evoke a contempt order, the failure of the Court to take these essential steps is substantial error.12 subsequent order and fine demonstrate just this in the instant case. It is obvious that the District Judge thus could not state findings and conclusions or give reasons for his order, since they would necessarily tear away the mask of "specific performance" and leave bare the labor injunction to the prohibition of Norris-LaGuardia.

The same applies to the Court's refusal to comply with F. R. C. P. 65(d), of course. This rule requires every injunction or restraining order to set forth reasons for its issuance and to state the acts sought to be restrained. Indeed the Third Circuit had previously held that this rule is mandatory, and that when the rulemakers used "every", they did not mean "anything less than what they said." Mayflower Industries v. Thor Corporation, 182 F. 2d 800, 801. But, in line with the caution which had to be observed in order to avoid Norris-LaGuardia, the District Judge likewise failed to comply with this order, too. The Court of Appeals attempts to justify this by saying that "this order is not an injunction" and is "simply" an order that petitioner "comply with" the arbitration award. But, is such an order any less injunctive because the word "enjoin" or "injunction" is omitted? It still orders or prohibits

^{12.} The Court of Appeals states that the District Judge could not file findings and conclusions because petitioner immediately appealed the order. But they should be filed with the order, and may be filed even after appeal. Gibbs v. Buck, 307 U. S. 66, 83 L. Ed. 1111 (1939).

acts, so that Rule 65(d) clearly applies. It is to avoid being entrapped into contempt that the Rule expressed this requirement. The Court of Appeals passes off this error as "minor and in no way decisional". We submit that this omission led petitioner into contempt costing \$100,000.00 per day. A more substantial error would be impossible to conceive. This is compounded by the fact that petitioner's counsel actually begged the District Judge to explain his order and state what action he wanted taken or avoided, so that his client could be properly advised.

The Courts below have so far departed from the mandate of the Federal Rules of Civil Procedure and the accepted and usual course of judicial proceedings, as to call for the exercise by this Court of its power of supervision: Rule 19. Cf., Bruner v. United States, 343 U. S. 12; Hickman v. Taylor, 329 U. S. 495. Upon this ground, also, certiorari should be granted and the decision below reversed.

CONCLUSION.

The decision of the Court below, if allowed to stand, will put the Federal Courts back into the injunction business, contrary to the express provisions of the Norris-LaGuardia Act and in direct conflict with the rule laid down by this Court in the Sinclair case. Certiorari should be granted to the end that the decision below be reversed.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
MARTIN J. VIGDERMAN,
FREEDMAN, BOROWSKY AND LORRY,

Counsel for Respondents.

APPENDIX A.

Norris-LaGuardia Act, 29 USCA.

§ 104. Enumeration of specific acts not subject to restraining orders or injunctions.

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

- (a) Ceasing or refusing to perform any work or to remain in any relation of employment;
- (b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;
- (c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;
- (d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;
- (e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

- (f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;
- (g) Advising or notifying any person of an intention to do any of the acts heretofore specified;
- (h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and
- (i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts hereto be specified, regardless of any such undertaking or promise as is described in section 103 of this title. Mar. 23, 1932, c. 90, § 4, 47 Stat. 70 (Norris-LaGuardia Act).

National Labor Relations Act.

- § 185. Suits by and against labor organizations—Venue, amount, and citizenship.
- (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties. Act of June 23, 1947, c. 120, Title III, Sec. 301.

Federal Rules of Civil Procedure.

RULE 52.

FINDINGS BY THE COURT.

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and

conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclutions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b). As amended December 27, 1946, eff. March 19, 1948; Jan. 21, 1963, eff. July 1, 1963.

RULE 65.

INJUNCTIONS.

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

APPENDIX B.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Civil Action No. 38647:

PHILADELPHIA MARINE TRADE ASSOCIATION, A Non-profit Delaware Corporation, Bourse Building, Philadelphia, Pa.,

Plaintiff,

v.

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION LOCAL 1291, PIER 4,
SOUTH WHARVES, PHILADELPHIA, PA.,

Defendant.

Order.

AND Now, To Wit, This 15th day of September, 1965, after hearing, it is hereby ordered, adjudged and decreed that the Arbitrator's Award in the matter of arbitration between the Philadelphia Marine Trade Association and International Longshoremen's Association Local 1291, issued on June 11, 1965, be specifically enforced by defendant, International Longshoremen's Association Local 1291, and the said defendant is hereby ordered to comply with and to abide by the said Award.

By THE COURT,

/s/ RALPH C. BODY, J.

APPENDIX C.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 15613

PHILADELPHIA MARINE TRADE ASSOCIATION

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,

Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Argued April 14, 1966

Before McLaughlin, Hastie and Freedman, Circuit Judges

Opinion of the Court (Filed August 11, 1966)

By McLaughlin, Circuit Judge.

In this action to enforce an arbitration award under a labor management contract, the trial Court ordered enforcement and the defendant union appeals.

The plaintiff association is a non profit organization comprised of steamship owners, operators, stevedores and the like in the port of Philadelphia. The union is the bargaining agent of the Philadelphia deep sea longshoremen. The bargaining agreement, dated February 11, 1965, applied retroactively from October 1, 1964 and expires Sep-

tember 30, 1968. On April 26, 1965, there was a dispute between the association and the union over the meaning of Section 10, sub. par. 6 of the agreement. The general caption of Section 10 is "Hiring System". Subparagraph (6) reads:

"(6) Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period unless employed during the morning period."

The matter was correctly referred to an arbitrator, Milton M. Weiss, Esq. There were three hearings, April 30, 1965, May 3, 1965 and May 5, 1965. At the start of the first hearing the Arbitrator stated:

"This hearing that we are conducting today, relating to interpretations of a clause of your new contract, from what I understand, between the parties, it has been agreed that it would be carried on in accordance with the usual procedures of The American Arbitration Association. Being a member of that panel, and having conducted hearings along these lines, I will proceed in the same fashion as we do in those cases."

He then said:

"I think maybe there are a couple of things I would like to say. I think all of us would like, perhaps, to resolve right in the beginning that it is understood between the parties that the determination made by the Arbitrator in this case will be final and binding."

To this Mr. Freedman, counsel for the Union, answered, "That is our understanding. As a matter of fact, that is the understanding of the agreement." Mr. Scanlan,

counsel for the association, answered: "Yes. In accordance with the contract."

A thorough, well reasoned decision was filed by the Arbitrator June 11, 1965. In that opinion the Arbitrator properly stated the "Issue Involved" as follows:

"Whether the provisions in the Memorandum of Settlement referred to above, i.e. Section 10, subparagraphs 5 and 6, are to be considered together so that the Employer's right to set back a gang from 8:00 A. M. to 1:00 P. M. is conditioned solely upon the non-arrival of a vessel in port, or is the Employer's right under Section 10, subparagraph 6 to set back a gang without qualification?"

The Arbitrator ruled:

"It is the Arbitrator's opinion that this Section 10(6) of the Memorandum of Settlement dated February 11, 1965 is clear and unequivocal and should not be given meaning other than expressed. . If the Arbitrator were to read into Section 10(6) the limitation urged on him by the Union, i.e. applicable only in case of non-arrival of a vessel in port, he would in effect be writing into the Memorandum of Settlement something which is not there. The Arbitrator has carefully reviewed the testimony as well as exhibits relating to the negotiations between the parties which resulted in their final agreement. It is quite obvious that the document finally agreed upon was the subject of much discussion and negotiation, and both parties had ample opportunity to modify and change these provisions before the final instrument was drawn. A review of the negotiations set forth above relating to Section 10(5) and 10(6) indicates clearly that there was much discussion and negotiation before the final draft which was contained in the Memorandum of Settlement dated February 11, 1965."

In making his Award, the Arbitrator held:

"The contention of the Employer, the Philadelphia Marine Trade Association, is hereby sustained and it is the Arbitrator's determination that Section 10(6) of the Memorandum of Settlement dated February 11, 1965, providing gangs 'ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM, at which time a 4 hour guarantee shall apply. A 1 hour guarantee shall apply for the morning period unless employed during the morning period,' may be invoked by the Employer without qualification.

"The contention of the Union, the International Longshoremen's Association, Local No. 1291, that Section 10(6) of the Memorandum of Settlement dated February 11, 1965, referred to above, can only be invoked by the Employer because of non-arrival of a vessel in port, is denied."

On July 30, 1965 the Union refused to acquiesce in Nacirema Operating Company, one of the Association employers, setting back an 8:00 A. M. start of work to 1:00 P. M.

According to the testimony which was not denied, the President of the Union, Mr. Askew, advised the executive director of the Trade Association, Mr. Corry, that "the arbitrator's award only applied to non-arrival of a ship." Told by Mr. Corry that "The arbitrator's award applies without qualification," Mr. Corry testified that Mr. Askew replied, "It does not and they were not going to live by it." Mr. Corry stated that Mr. Askew told him he would have to talk to the business agents. Mr. Corry said he did so, to Messrs. Johnson and Devine, that Mr. Johnson did most of the talking "—and Paul Johnson said that they were not going to abide by the arbitrator's decision on the setback, and Mr. Devine as much as said, 'Yes, that's

right,' and that was the extent of my conversation with them."

On August 2, 1965, the Association filed a complaint: against the Union in the District Court. This set out the labor agreement between the parties, the Arbitration Award, "that the Union does not agree with the Arbitrator's Award and does not intend to comply with the terms of such award." The complaint went on to allege serious damage to the Employer, the owners and operators of the particular vessel and to the Port of Philadelphia. It stated that "The defendant's refusal to comply with the Arbitrator's Award constitutes a breach of the applicable provisions of the current Collective Bargaining Agreement between P. M. T. A. and the Union." It prayed for an immediate hearing and "an order enforcing the Arbitrator's Award' with " * * such other and further relief as may be justified." The District Court issued an order to show cause to defendant, "why it has not complied with the Arbitrator's Award of June 11, 1965" and a hearing was set for August 3, 1965, 11 A. M. A motion was filed on behalf of defendant to dismiss the complaint upon the grounds it did not state a cause of action and that the Court was without jurisdiction to grant the relief sought which the motion called "injunctive".

At the hearing counsel for the plaintiff informed the Court that the action was under Section 301 of the Labor Management Relations Act (29 U. S. C. § 185) for enforcement of the Arbitration Award, above quoted, under the bargaining agreement between the parties which the union had refused to abide by in connection with the employer's attempted set back of work on July 30th and that the union's position was that it "would not abide by the arbitrator's award."

Counsel for the union told the Court "We, that is, the union, make no bones about the fact that they are unhappy with the arbitrator's award, but we realize that we are stuck with it." He insisted several times more that the union would live up to the arbitrator's award. After argument on the question of jurisdiction, the Court held it possessed jursidiction. Contention was made for the union that the employees had to be notified by 7:30 A. M. of a set back. Actually, all the award mentioned about 7:30 A. M. was, as seen above, to repeat the language of 10(6) of the employment agreement providing that the gangs "ordered for an 8:00 A. M. start Monday through Friday can be set back at 7:30 A. M. on the day of the work * *." There is nothing regarding notification to employees by 7:30 A. M. In passing, that would be a physical impossibility where the set back itself did not take place until 7:30 A. M. This particular argument was not urged at the later hearing nor is it alluded to on this appeal.

At the August 3rd hearing the Court was advised by counsel for the plaintiff that because of the economic problem of keeping the ship idle, the objected to additional wages demanded had been paid and that the men had returned to work. The Court made the following statement:

"I will keep the matter in hand. I will keep the matter in hand as a judge. If anything arises, I will take jurisdiction, and whatever the situation is, we will handle it at that time.

"So if you don't want to present any more testimony today, on either part, we will just continue the hearing; that's all. It will be continued."

The question of the construction of the Arbitrator's Award again came before the Court on September 13, 1965. At that time the Court said to counsel on both sides:

"It was my recollection that at the testimony of the last time, I said that I would keep the case in my hands and continue it and hold the matter in my jurisdiction, and with that I think we closed the case.

"Now, I understand from Mr. Scanlan some other facts have arisen which were not in existence at the last time we came in because the men that had not been to work had returned to work at the time you came back for the final hearing. I understand other facts have arisen, so, Mr. Scanlan [counsel for plaintiff], we will give you the oar."

On that occasion four employees of the plaintiff had attempted to set back gangs under the Arbitrator's Award and Mr. Askew, President of the Union, ordered the men to follow different procedures. Plaintiff's dilemma, as outlined to the Court, was that an order was needed requiring the Union to comply with the Award "because we cannot operate in this port if we are going to be continually harassed by the Union in taking the position that they are not going to abide by an Arbitrator's Award, and we cannot continue to live under a situation where from one day to another we do not know whether a similar announcement will be made telling the men not to report for work."

For the defense, it was again asserted that the Court had no jurisdiction, with the further argument that the Award only covered the one dispute then active, i.e. "Every dispute is a different case all by itself." At a further hearing on September 15, the subsequent events making the hearing necessary were narrated by witness for the plaintiff, Mr. Corry, the executive secretary of the Association, who testified, of the Union president's order to the men which in effect countermanded the employers' set backs and stopped work on the four ships concerned. Mr. Corry said that in a talk he had had with Mr. Askew, the latter told him that "* * the set back only applied to the non-arrival of a ship and he wanted to rearbitrate." Mr. Evans, chief dispatcher for the Association, heard Mr. Askew give his countermanding order and so stated.

There was no testimony on behalf of the Union.

The Court's attention was specifically called to the various statements by counsel for the Union at the previous hearing to the effect that the Union would obey the Arbitrator's Award, particularly to counsel having said to the Court

"" * And the arbitrator decided contrary to the union's position that this setback could be invoked for any reason, not only for non-arrival of a vessel or for inclement weather. It had been the union's position—it still is—although it is moot now—that the setback could only be for specific reasons, either for non-arrival of a vessel, for inclement weather, or for compelling reasons like that which was not within the control of the employer."

It was claimed on behalf of the Union that the Arbitrator's decision governed only the single dispute at that time and did not apply to any other subsequent 10(6) problem. The second point presented was a repetition of the question passed upon by the Court at the first hearing i.e. a denial of jurisdiction on the ground that injunctive relief was being sought.

The Court, holding that the Arbitrator's Award was final and binding in its construction of Section 10(6) of the employment agreement, ordered that the Union specifically enforce it and that it comply with and abide by the

said Award.

Appellant argues that this is an injunction proceeding prohibited by the Norris-LaGuardia Act. It relies completely upon Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962). That suit concerned an injunction to end the particular strikes involved and work stoppages on nine occasions over a period of almost two years. It categorically holds pp. 213 and 214:

"The plain fact is that § 301, as passed by Congress, presents no conflict at all with the anti-injunction provisions of the Norris-LaGuardia Act. Obedience to the congressional commands of the Norris-

LaGuardia Act does not directly affect the 'congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes' at all for it does not impair the right of an employer to obtain an order compelling arbitration of any dispute that may have been made arbitrable by the provisions of an effective collective bargaining agreement."

In that decision the Supreme Court, p. 212, approved of its opinion in Textile Workers Union v. Lincoln Mills, 353 U. S. 448 (1957) which held pp. 458-459:

"The Congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of Section 7 of the Norris-LaGuardia Act."

In 1960 in the case of Steelworkers v. Enterprise Corp., 363 U. S. 593, the Supreme Court again ruled that the District Courts, as here, have jurisdiction under Section 301 of the Labor Management Act to order compliance with Arbitration Awards. The Fourth Circuit Court of Appeals, 269 F. 2d 327 (1959) had modified the judgment of the District Court as the Supreme Court said p. 599 " * * so that the amounts due the employees may be definitely determined by arbitration. In all other respects we think the judgment of the District Court should be affirmed." See also Textile Workers Union v. American Thread Co., 113 F. Supp. 137, 141, 142 (D. Mass. 1953), which was completely approved by the Supreme Court in Lincoln Mills, supra. Local 149 Boot and Shoe Workers v. Faith Shoe Co., 201 F. Supp. 234 (M. D. Pa. 1962) where the Court sustained a § 301 action similar to the one at bar to enforce an Arbitrator's Award. New Orleans S. S. Association v. Longshoremen's Local 1418, 44 CCH Labor Cases 26,602 (E. D. La. 1962) dealt with the same problem with the Court holding:

"However, the parties to the contract agreed to be bound by the decision of the arbitrator, and the plaintiff is entitled to have the award of the arbitrator enforced."

Under the facts and the law, the holding of the District Court that it had the jurisdiction to enforce the crystal clear judgment of the Arbitrator was sound and right. It was not in conflict with the Norris-LaGuardia Act but completely within the Lincoln Mills and Steelworkers opinions, supra, and a vital part of the all important enforcement of the specific performance of the admittedly agreed to arbitration clause in the labor contract before us.

Appellant also complains that the trial Court did not make findings of fact and conclusions of law and give reasons for the issuance of the order and to clarify the nature of the conduct compelled, allegedly in violation of F. R. C. P. 52(a) and 65(d).

The argument is without merit. Appellant's citations from this Circuit are founded on particulars radically different from those before us and are not comparable. We have already held that this is not an injunction suit. It is squarely under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. It alleges a breach by defendant of its labor contract with plaintiff in that the former refuses to comply with the Arbitrator's Award under said contract to its damage and asks for an order enforcing the Award: for specific performance of the Award. On August 3. 1965 when the matter had first been heard, because the men were back at work then under circumstances as outlined earlier, the Court said, "I will keep the matter in hand as a judge. If anything arises, I will take jurisdiction and whatever the situation is, we will handle it at that time." In accordance with this, on August 13, 1965 the attorney for the plaintiff reported the new situation to the Court. as above related and the Court thereafter held a hearing at plaintiff's request. This was still under the original

order on defendant to show cause why it had not complied with the Arbitrator's Award. The decision disposed of the rule to show cause by ordering compliance with the Award on the part of defendant. Plaintiff urges that in those circumstances Rule 52(a) does not govern since in reality the decision was on plaintiff's motion under its rule to show cause. Under 52(a), findings of fact and conclusions of law are unnecessary on decisions on motions with the exception of involuntary dismissal motions under Rule 41(b). Plaintiff here makes an impressive point.

And the circumstance that defendant took its appeal the day after the order was and is important. Whether deliberate or not, it precluded the trial Court from entering findings of fact and conclusions of law even if they were required in this instance.

Above all, in the uncontradictable posture of this appeal the error, if any, of not filing findings of fact and conclusions of law was inconsequential. There was no dispute of fact, and no challenge whatsoever of evidence on behalf of the plaintiff. The sole opposition to plaintiff's proofs was the legal argument that the Court did not possess jurisdiction and that the Arbitration Award did not mean what it said and was not of the scope which had been definitely agreed to on behalf of the Union. Factual issues therefore were not validly before the Court and the record fully discloses the in effect admitted facts on which the order was based. Barron & Holtzoff (Wright Rev.), Vol. 2b § 1126 p. 500. The trial Court, on the legal points before it, merely determined the law from the uncontroverted facts, making the absence of formal findings of fact and conclusions of law excusable. United States v. Prendergast, 241 F. 2d 687 (4 Cir. 1956); Rossiter v. Vogel, 148 F. 2d 292 (2 Cir. 1945); Hurwitz v. Hurwitz, 136 F. 2d 796 (D. C. Cir. 1943).

Rule 65(d) F. R. C. P. deals with "Form and Scope of Injunction or Restraining Order". In pertinent part it reads:

"Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; " ""

The order in question reads:

"And Now to Wit, This 15th day of September, 1965, after hearing, it is hereby ordered, adjudged and decreed that the Arbitrator's Award in the matter of arbitration between the Philadelphia Marine Trade Association and International Longshoremen's Association Local 1291, issued on June 11, 1965, be specifically enforced by defendant, International Longshoremen's Association Local 1291, and the said defendant is hereby ordered to comply with and to abide by the said Award."

As we have indicated this order is not an injunction. Nor can it be reasonably construed as a restraining order. All that it requires is that the defendant affirmatively enforce the Award and comply with and abide by it. It simply calls upon the defendant for specific performance of the Arbitration Award.

Even if it were assumed to be within Rule 65(d), under the facts, the language of the order is fundamentally in accordance with 65(a). Mayflower Industries v. Thor, 182 F. 2d 800 (3 Cir. 1950), cert. den. 341 U. S. 903 (1951), relied on by appellant had to do with an injunction issued under Rule 62(c) pending an appeal. Because no grounds were given for its issuance the injunction was dissolved. The case does not touch the special factors of this controversy. In any event if there is error with respect to 65(d), it is minor and in no way decisional.

Appellant's final point is that the action was moot because plaintiff failed to go to arbitration as required

by the contract and because there was no authority to retain jurisdiction. This needs no extended discussion. The August third episode was not ended legally because the employer was forced to pay the extra money demanded under the economic compulsion of being unable to keep its ship idle. The Court continued the case for the time being against the possibility of a like practical condition arising. The wisdom of so doing developed when an identical type of work disturbance and of more serious proportions broke out on September 13th, was immediately brought before the Court and promptly concluded. The issue was the very same continuing quarrel regarding the governing labor agreement which directly affected the entire Port of Philadelphia.

The thought advanced that the litigation was moot because plaintiff refused to go to arbitration is out of line with the facts and the law. As has been seen the Arbitration Award was not to cover just a single wrangle under The Award construed 10(6) itself and held generally regarding set backs that which it so plainly sets fortheas above quoted. This, as was admitted for the Union ended all attempted legitimate divergence of opinion regarding them. It was no failure to arbitrate on the part of the Association that necessitated the Court action. It was rather the deliberate decision of the Union to disregard the Award in the hope of in some fashion restricting it to the first incident of August 3rd, 1965.

The record in this appeal is free of any substantial. Th eorder of the trial Judge directing specific operformance of the Arbitrator's Award was called for by the facts and law of the problem involved. It will be affirmed.

APPENDIX D.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 15613

PHILADELPHIA MARINE TRADE ASSOCIATION

2).

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,

Appellant

(D. C. Civil No. 38647)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

Present: McLaughlin, Hastie and Freedman, Circuit Judges.

Judgment.

This cause came to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the District Court (directing specific performance of the Arbitrator's Award) filed September 15, 1965, be, and the same is hereby affirmed, with costs.

ATTEST:

IDA O. CRESKOFF

Clerk

August 11, 1966

APPENDIX E.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 15613

PHILADELPHIA MARINE TRADE ASSOCIATION

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, Appellant

Before: Staley, Chief Judge, and McLaughlin, Kalodner, HASTIE, SMITH, FREEDMAN and SEITZ, Circuit Judges.

Order.

The petition for rehearing and consolidation in this case is denied.

By THE COURT,

McLAUGHLIN Circuit Judge

Date: September 22, 1966

APPENDIX F.

Decision and Contempt Order of District Judge.

March 1, 1966

THE COURT: Gentlemen, this is a difficult case and one involving men who work on the docks.

We have an agreement and it is alleged that that agreement was violated. The matter came before me after the arbitration, after the arbitrator, Mr. Weiss, decided against the Union and its contention. The opinion of the arbitrator, Mr. Weiss, was upheld and I issued an order on September 15, 1965 enforcing that order.

Here we have men hired to do work and then they refuse under the conditions mentioned. They stop work and influence others not to report.

Both sides, of course, have a right to be here. That's the purpose of this Court.

I have heard the evidence presented and the arguments thereon. As long as the Union is functioning as a union, it must be held responsible for the mass action of its members. That means this: When the members go out in the manner in which they did and do an illegal act, the Union is responsible. They can't say, "We didn't do that as Union members." If members of the Union—then they do act under the laws of this country—if it is a mass action, the Union is responsible, and that's what we have here. It is a mass action along the Philadelphia waterfront, and it is illegal to strike under the circumstances, so the Union cannot escape responsibility on the basis that a leader or some of the leaders urged a man or some men or many men to return to work, but they did not return to work.

So in my opinion the Union in effect approved what was done and must be held responsible. They violated the order of this Court and therefore shall be adjudged in civil

contempt. I hold the Union, the officers and the men who participated responsible in contempt of court and at this time civil contempt only.

The fine against the Union will be \$100,000 per day effective this date at 2:00 P. M., the first payment to be made within 24 hours to the Clerk of the United States District Court, and every day thereafter as long as the order of this Court is violated.

There will be a further hearing on this matter in the event that anything is desired to be presented by either or both counsel, and I will reserve the time, Monday at 2:00 P. M.

Exception noted.

(Concluded at 6:45 P. M.)

JAN 19 1937

JOHN F. DAVIS. CLERK

No. 892 34

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 1291,

Petitioner,

PHILADELPHIA MARINE TRADE ASSOCIATION

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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Counsel for Respondent

Supreme Court of the United States

OCTOBER TERM, 1966

No. 892

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 1291,

Petitioner,

v

PHILADELPHIA MARINE TRADE ASSOCIATION

On Petition For Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION AND ORDERS OF THE COURTS BELOW.

The opinion and orders below are adequately set forth in the Petition with the exception of the Order of the District Court for the Eastern District of Pennsylvania, holding petitioner in contempt and levying a fine as printed in the Petition as Appendix F. This order is not a part of the record in this case. It involves a separate, subsequent matter which was made a separate appeal and is not referred to in the opinion or judgment of the Court

below (App. C and D of petition, pp. 5a-18a). The said order was affirmed by the Court of Appeals for the Third Circuit in a separate opinion and judgment dated November 17, 1966, and a petition for rehearing was denied on January 6, 1967. Therefore, it is respectfully submitted that the said order should not be considered by this Court.

JURISDICTION.

The jurisdictional requisities are adequately set forth in the Petition.

QUESTION PRESENTED.

Did the District Court have jurisdiction under Section 301 of the Labor Management Relations Act, 29 U.S.C.A. 185, to enter an order enforcing an arbitrator's award which the parties agreed was final and binding where the petitioner refused to comply with the award and took the position that it was not bound by the award?

STATUTE INVOLVED.

The Labor Management Relations Act, Section 301, 29 U.S.C.A. 185.

STATEMENT.

This action was simply for the enforcement of an arbitrator's award. It was not an injunction against work stoppages, was never intended to be such an injunction, was found by the Courts below not to be an injunction and cannot be converted into such an injunction by petitioner's semantics.

The essential facts are set forth in the opinion of the Court below (App. C of petition, pp. 5a-17a). A dispute arose between the parties on April 26, 1965, involving an interpretation of a section of their collective bargaining agreement. This dispute was "correctly" referred to the impartial arbitrator under the labor contract (6a). The

arbitrator held three hearings. At the first hearing it was agreed, as required by the labor agreement, that the arbitrator's decision was to be "final and binding" (6a). On June 11, 1965, the arbitrator in "a thorough, well reasoned decision" ruled in favor of respondent (7a).

On July 30, 1965, petitioner refused to acquiesce to the arbitrator's award and announced that it was not going to abide by it (8a). On August 2, 1965, respondent filed a complaint in the District Court under Section 301 of the Labor Management Relations Act (29 U.S.C.A. 185) for "an order enforcing the Arbitrator's Award" (9a). At the hearing on August 3, 1965, counsel for petitioner stated to the Court on several occasions that "the union would live up to the arbitrator's award" (10a). The hearing was then continued with the Court retaining jurisdiction (10a).

On September 13, 1965 in spite of the assurance given to the Court, petitioner again refused to comply with the arbitrator's award. A hearing was held on September 15, 1965 at which time it was uncontradicted that petitioner had violated the arbitrator's award (11a). The Court entered an order providing that the arbitrator's award "be specifically enforced by defendant, International Longshoremen's Association Local 1291, and the said defendant is hereby ordered to comply with and to abide by the said Award" (App. B of petition, p. 4a).

The Court of Appeals affirmed the order of the District Court (App. C and D of petition, pp. 5a-18a).

ARGUMENT.

The Decision Below is Clearly Correct.

After a searching examination of the entire record, the Court below concluded that: "The order of the trial Judge directing specific performance of the arbitrator's award was called for by the facts and law of the problem involved" (17a).

The Court below considered and properly disposed of petitioner's arguments as set forth in its petition. With respect to petitioner's first contention that the District Court's order was an injunction in violation of the Norris-LaGuardia Act and the decision of this Court in Sinclair Refining Co. v. Atkinson, 370 U.S. 195, the Court below said:

"Appellant argues that this is an injunction proceeding prohibited by the Norris-LaGuardia Act. It relies completely upon Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962). That suit concerned an injunction to end the particular strikes involved and work stoppages on nine occasions over a period of almost two years. It categorically holds pp. 213 and 214:

'The plain fact is that § 301, as passed by Congress, presents no conflict at all with the anti-injunction provisions of the Norris-LaGuardia Act. Obedience to the congressional commands of the Norris-LaGuardia Act does not directly affect the 'congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes' at all for it does not impair the right of an employer to obtain an order compelling arbitration of any dispute that may have been made arbitrable by the provisions of an effective collective bargaining agreement.'

In that decision the Supreme Court, p. 212, approved of its opinion in *Textile Workers Union* v. *Lincoln Mills*, 353 U. S. 448 (1957) which held pp. 458-459:

'The Congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of Section 7 of the Norris-LaGuardia Act.'

In 1960 in the case of Steelworkers v. Enterprise Corp., 363 U. S. 593, the Supreme Court again ruled

that the District Courts, as here, have jurisdiction under Section 301 of the Labor Management Act to order compliance with Arbitration Awards. . ." (12a-13a)

In summary of this jurisdictional point, the Court below said:

"Under the facts and the law, the holding of the District Court that it had the jurisdiction to enforce the crystal clear judgment of the Arbitrator was sound and right. It was not in conflict with the Norris-LaGuardia Act but completely within the Lincoln Mills and Steelworkers opinions, supra, and a vital part of the all important enforcement of the specific performance of the admittedly agreed to arbitration clause in the labor contract before us." (14a)

As mentioned above, petitioner's references to a dispute between the parties which arose February 24, 1966 and all events subsequent thereto including an order of the District Court holding petitioner in contempt and levying a fine (App. F of petition, pp. 20a-21a) are not a part of the record in this case. These events were the subject matter of a separate appeal before the Court of Appeals for the Third Circuit on the question as to whether petitioner was properly held in contempt of Court for violating the order of the District Court. Consequently, it is respectfully submitted that all references in Petitioner's petition to matters which are not contained in the record in this case, should not be considered by this Court.

Petitioner's final contention that the decision of the Court below was in violation of the F.R.C.P. 52(a) and 65(d) is equally without merit. The Court below properly and adequately disposed of this contention in its opinion (14a-16a).

Respondent respectfully submits that an examination of the record in this case will show that the decision of

the Court below was clearly correct, and that there is no conflict of decision with this Court. There is no asserted conflict of decision with any other Court of Appeals. Manifestly, there is no important question of Federal law requiring decision by this Court.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

Francis A. Scanlan, Kelly, Deasey & Scanlan Counsel for Respondent

January, 1967

DBRARY SUPREME COURT. U.

Office-Supreme Court, U.S. FILED

AUG 24 1967

JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1967.

No. 34.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,

Petitioner.

PHILADELPHIA MARINE TRADE ASSOCIATION.

On Writ of Certiorari to the United States Court of Appeals For the Third Circuit.

BRIEF FOR PETITIONER.

ABRAHAM E. FREEDMAN. MARTIN J. VIGDERMAN, FREEDMAN, BOROWSKY AND LORRY, Lafayette Building, Eighth Floor, Philadelphia, Pennsylvania. 19106 .

Counsel for Petitioner.

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Supreme Court of the United States

October Term, 1967

No. 34

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,

- Petitioner,

PHILADELPHIA MARINE TRADE ASSOCIATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR PETITIONER.

OPINIONS OF THE COURTS BELOW.

The District Court for the Eastern District of Pennsylvania did not render any opinion but filed an order which is unreported, but which is printed in the Record at p. 113. The opinion of the Court of Appeals for the Third Circuit is reported at 365 F. 2d. 295 (R. 114). The order of the Court of Appeals for the Third Circuit denying rehearing is printed in the Record at p. 128.

JURISDICTION.

The judgment of the Court of Appeals for the Third Circuit was entered on August 11, 1966 (R. 127). The order denying rehearing was entered on September 22, 1966 (R. 128). The jurisdiction of this Court is invoked under 28 U.S. C. § 1254(1).

QUESTIONS PRESENTED.

- 1. Does a federal court have jurisdiction to enjoin a union from a work stoppage arising out of a labor dispute, under the guise of an order for specific performance to enforce an arbitrator's award?
- 2. Is it not error for a trial judge to retain jurisdiction of a case which is admittedly moot and thereafter to hold a hearing on another dispute involving different parties on an ex parte report of one of the parties, without requiring a new complaint or any pleading setting forth the new dispute, and then enter an ambiguous order subsequently construed to be a restraining order, which he refused to clarify or explain, in violation of F. R. C. P. 65(d), and concerning which he failed to make findings of fact and conclusions of law, in violation of F. R. C. P. 52(a)?

STATUTES AND RULES INVOLVED.

The statutory provisions and rules involved are: Norris-LaGuardia Act, Act of March 23, 1932, c. 90, Sec. 4, 47 Stat. 70, 29 U. S. C. A. 104; Federal Rules of Civil Procedure 52(a) and 65(d). They are set forth in Appendix hereto.

STATEMENT OF THE CASE.

Philadelphia Marine Trade Association (PMTA) represents the employer group under the terms of a collective bargaining agreement with Local 1291, International Longshoremen's Association (ILA) in the Port of Philadelphia.

The agreement provides for the employment of long-shoremen on the day before the commencement of the work. Article 10(6) provides that the employer may, at 7:30 a.m., "setback" the starting time from 8:00 a.m. to 1:00 p.m., in which event the longshoremen receive a one-hour guarantee for the morning (R. 7). Article 9(h) provides that if the employment is terminated because of inclement weather, the men shall receive a four-hour guarantee (R. 12). Section 28 of the agreement provides for grievance and arbitration procedure and requires that all disputes and grievances "of any kind or nature whatsoever arising under the terms and conditions of this agreement" shall be submitted to a grievance committee; and, if the dispute is not settled at that level, then it must be submitted to arbitration (R. 12-13).

On April 25, 1965, T. Hogan Corporation, one of the employer members of PMTA, hired a number of longshoreman gangs for an 8:00 a.m. start the next day. The following morning Hogan changed the starting time to 2:00 p.m. because of inclement weather and offered only one hour of the guarantee time for the loss of the morning's employment under Article 10(6) of the union agreement. The union objected, claiming that the men were entitled to four hours' pay under the inclement weather clause, 9(h). The matter was submitted to arbitration and, after a number of hearings, with extensive testimony rendered by both sides, the arbitrator declined to hear summation from counsel

^{1.} Since this case and No. 78 of this Term are companion proceedings, the latter being a contempt action which flowed from this injunction proceeding, this statement will include the complete resume of facts in order to avoid overlapping and for the convenience of the Court.

for both sides and stated further that he did not desire any briefs from the parties. Several weeks later, he rendered a decision holding that Section 10(6) of the agreement, standing by itself, required a one-hour guarantee, and he, accordingly, rejected the union's claim for four hours. He refused to consider the inclement weather clause or any other section of the agreement than 10(6) on which he based his conclusion (R. 16-31).²

The award of the arbitrator provided that the employer could invoke the set, back clause 10(6), "without qualification" under a one-hour guarantee (R. 31).

On July 29, 1965, another dispute erupted when Nacirema Operating Co., another employer, not involved in the prior dispute, changed the starting time from 8:00 a.m. to 1:00 p.m. because of inclement weather and offered the longshoremen one-hour guarantee time, instead of the four-hour guarantee under the inclement weather clause. The union demanded arbitration of the dispute under the agreement, but the employer frustrated the arbitration procedure by bringing an action in the federal court to extend the arbitrator's decision in connection with the dispute of April 26, 1965 to all future disputes, and sought to restrain any further union attempts to arbitrate that issue or the inclement weather clause issue and to enjoin all work stoppages in connection therewith. The suit was treated as one for an injunction, and the district judge scheduled an imme-

^{2.} It is extraordinary that the arbitrator should decline to hear the arguments of counsel at the end of the evidence or to request briefs so that both sides would have an opportunity to fully express their views regarding the inferences and conclusions to be drawn from the evidence and the interpretation to be given to the agreement as a whole, not merely any single section thereof.

^{3.} There is no provision in the award requiring the longshoremen to return to work because there was, in fact, no work stoppage.

^{4.} The agreement required that "all disputes" must be submitted to grievance and arbitration. Moreover, Section 28, the arbitration clause, provides that "should the terms and conditions of this agreement fail to specifically provide for an issue in dispute or should a provision of this agreement be the subject of disputed interpretation, the arbitrator shall consider port practice in resolving the issue before

diate hearing, by which time the longshoremen had all returned to work, and the action had become moot. Judge Body denied the union's motion to dismiss on the ground of mootness and for lack of jurisdiction, and he "retained jurisdiction" of the case so that "if anything arises", he would "handle it at that time" (R. 45, 46, 61, 73, 82).

A new dispute arose involving an entirely different group of employers on September 13, 1965, when a large group of gangs who had been employed the day before were advised that they would be set back from an 8:00 a.m. start to a 1:00 p.m. start that day because of inclement weather, and they were offered the one-hour guarantee, instead of the four-hour guarantee under the inclement weather clause (R. 70, Case No. 78). The union claimed the four-hour guarantee under the inclement weather clause, and the employers refused. The union demanded arbitration, which the employers denied (R. 80-81). Instead, counsel for the employers "reported" ex parte to the District Judge, who then scheduled an immediate hearing on the basis of the "facts" reported (R. 75). At the hearing on September 13 and 15, 1965, the union objected and moved that the "facts" be pleaded, as required by the Federal Rules of Civil Procedure (R. 79-81, 88). This motion was summarily denied (R. 90). The union repeated the motion to dismiss for lack of jurisdiction based on this

him" (R. 14). Furthermore, the record shows that on prior occasions, a disputed clause in the agreement was arbitrated on each occasion that a dispute arose, even though the issue was identical; and, with respect to one of the provisions in the same agreement, the identical issue was re-arbitrated as many as five times, and, on the last occasion, the arbitrator reversed his prior rulings (No. 78, October Term, 1967, R. 118-119).

^{5.} In support of the motion to dismiss, counsel for the union cited this Court's decision in Sinclair Refining Co. v. Atkinson, 370 U. S. 195, but the court summarily denied the motion without examining the decision (R. 82). The court also ignored this Court's decision in Amalgamated Assn., etc. v. Wisc. ERB, 340 U. S. 416, 95 L. ed. 389, which held that mootness deprived a federal court of jurisdiction and required a dismissal of the complaint.

Court's decision in Sinclair Refining Co. v. Atkinson, 370 U. S. 195 (R. 82-83), but this motion also was summarily denied (R. 83). The hearing proceeded on the "facts" reported to the judge. Counsel for the union refused to cross-examine any witnesses or to offer any evidence on the ground that he could not properly present any defense because of the absence of the necessary pleadings and other requirements of the Rules (R. 95, 97, 101).

At the conclusion of the hearing, the court entered an order stating that the arbitrator's award "be specifically enforced", and that the union "comply" with said award (R. 113). Since the arbitrator's award simply construed Section 10(6) of the agreement and refused the union's claim for four hours of guarantee time, it was completely unclear what was intended by the court's order. Union counsel, therefore, requested clarification and, particularly, to determine whether the court's order restrained a strike or a work stoppage or precluded the union from attempting to invoke the arbitration process in future disputes (R. 111-12). Judge Body flatly refused to explain or amplify his order and to make findings as required by the Federal Rules of Civil Procedure (R. 112-13).

^{6.} The arbitration award (R. 30) simply denied the claim of the union for four hours and sustained the employer's position that only one hour was due under the set back clause. The award did not contain any order or instruction that the longshoremen return to work. Indeed, there was no work stoppage in connection with the dispute of April 26, 1965.

^{7.} The record shows a determined effort by counsel for clarification, and an even greater determination by the district judge to keep defendant in the dark (R. 111-12):

[&]quot;THE COURT: I will sign this order."

[&]quot;MR. FREEDMAN: Well, what does it mean, Your Honor?

[&]quot;THE COURT: That you will have to determine, what it means.

[&]quot;Mr. Freedman: Well, I am asking. I have to give my client advice and I don't know what it means. I am asking Your Honor to tell me what it means. It doesn't—

[&]quot;THE COURT: You handled the case. You know about it. You are arguing it doesn't fit into this case.

Five months after the entry of the foregoing order, on February 24, 1966, a different group of companies employed a large number of longshoreman gangs to start work at 8:00 a.m. the following morning. The next day the employers, at 7:50 a.m., set back the starting time to 1:00 p.m. because of inclement weather and offered to pay only the one-hour guarantee instead of the four-hour guarantee under the inclement weather clause. The long-shoremen protested to the union officials, who advised them to report as directed, and they would invoke the grievance and arbitration machinery in an effort to obtain the four-

"Mr. Freedman: I am telling you very frankly now I don't know what this order means, this proposed order. It says, 'Enforcement of the award.' Now, just what does it mean? Are we being restrained from a work stoppage? . . :

"THE COURT: The Court has acted. This is the order.

"MR. FREEDMAN: Well, won't Your Honor tell me what it means?

"THE COURT: You read the English language and I do.

"MR. FREEDMAN: I will ask you, but it doesn't say it. I can't understand it. I am telling Your Honor I don't understand it. Now, perhaps Your Honor can explain it to me. Does this mean that the union cannot engage in a strike or refuse to work or picket?

"THE COURT: You know what the arbitration was about.
You know the result of the arbitration.

"Mr. Freedman: The arbitration here was under a specific set of facts, involved an interpretation of the contract under a specific set of facts, and he made that interpretation. Now, how do you enforce it? That case is over and done with. These are new cases. Your Honor is changing the contract of the parties when you foreclose them from going to arbitration on this point again.

"THE COURT: I have signed the order. Anything else to come before us?

"MR. FREEDMAN: I know, but Your Honor is leaving me in the sky. I don't know what to say to my client."

8. The set back clause 10(6) under which the employers allegedly set back the starting time required that the longshoremen be notified at 7:30 a.m.

hour guarantee (No. 78; R. 70, 86-87, 127). However, provoked by the frequency of the set backs over the past ten months, the longshoremen who had been denied employment that morning marched up and down the waterfront and succeeded in causing other longshoremen to knock off work on other vessels, despite the pleas of the union officials to continue working while they made an effort to adjust the matter with the employers. The union distributed circulars along the waterfront and made personal pleas thereafter urging the men to return to work. The employers admitted that the union and the officials did all in their power to effect the return of the men to their jobs (No. 78; R. 5, 148). Even the president of the employer association admitted the sincerity of the union officials' efforts (No. 78; R. 53).

The union officials orally asked the employer association to discuss the matter under Section 28, the grievance and arbitration provision in the agreement, but the employers refused. The union then sent a telegram to the employers invoking the grievance and arbitration clause under the contract (No. 78; R. 29-30, 92-93). Thereupon the employers "reported" ex parte to Judge Body the "facts" relating to this latest work stoppage and claimed that the union had violated the Court's order because it sought arbitration of the issue.

No pleading or other document was filed setting forth the employer's position or its contentions, but the court nevertheless scheduled a contempt hearing a few days

^{9.} During the period of ten months from the time of the first dispute on April 26, 1965 to the time of the last-mentioned dispute, the employers had set back the longshoremen seventy-one times and paid only the one-hour guarantee, instead of the four-hour guarantee claimed by the longshoremen (No. 78; R. 31). This became a constant source of discontent among the longshoremen and undoubtedly was the cause of growing unrest.

^{10.} No. 78; R. 70-71, 80, 82-83, 87-88, 91-92, 94-95, 104-106, 109-110, 111, 127-131, 134-136, 139-142, 144-147; Ex. R-1 (R. 39-41), Ex. R-2 (R. 151-152).

later, on March 1, 1966. At the outset of this hearing, the union moved that the employers be required to file a pleading setting forth the facts and circumstances and manner in which the union was supposed to have violated the court's order, so that the union could file an answer and prepare its defense (No. 78; R. 15-16).11 The court summarily denied this motion (No. 78; R. 17). The union then moved for a dismissal on the ground that the entire proceeding was in violation of Section 4 of the Norris-LaGuardia Act and of this Court's decision in the Sinclair case; but the District Judge promptly denied this motion also, and directed the parties to proceed with the testimony (No. 78: The union then filed a written application for a jury trial under the Act of 1948, but Judge Body summarily denied this motion also (No. 78; R. 13, 15). At the conclusion of the testimony, the District Judge rendered an oral decision from the bench holding the union and its officers and members (although neither the officers nor members were made parties at any time to the action) guilty of contempt, on the ground that the union was responsible for the "mass action" of its members, and fined the union \$100,000.00 per day, making it retroactive to 2:00 p.m. that day and for the succeeding days of the "wildcat" work stoppage (No. 78; R. 150-51).

^{11.} In addition to the other defenses heretofore outlined the union also could have alleged in an answer (if appropriate pleadings had been filed with an opportunity to answer by the union and crystallize the issues) the further defense that the employers had failed to set back the men at 7:30 a.m., as required by 10(6) of the very clause on which the employers relied. The District Judge, however, rejected all arguments that each dispute must be individually handled and ignored this argument also (No. 78; R, 18).

ARGUMENT.

I. The Court Below Was Deprived of Jurisdiction to Entertain the Complaint by Section 4 of the Norris-LaGuardia Act Because It Sought to Restrain a Work Stoppage Arising Out of a Labor Dispute, and the Complaint Should, Therefore, Have Been Summarily Dismissed.

This Court settled beyond all doubt that a federal court is without jurisdiction to issue an order which would have the effect of enjoining a work stoppage or "any one of the kinds of conduct which the specific prohibitions of the Norris-LaGuardia Act withdrew from the injunctive powers of United States courts", in Sinclair Refining Co. v. Atkinson, 370 U. S. 195, 8 L. Ed. 2d 440, 82 S. Ct. 1328. The Court below, however, attempts to avoid this conclusion by holding that the order of the District Judge "simply calls upon the defendant for specific performance of the arbitration award", that it was "not an injunction", and that it could not "be reasonably construed as a restraining order". The naked, indisputable fact is that the District Judge held the union in contempt because certain of the members engaged in a work stoppage which he construed to be in violation of his order.12

The question here presented is whether the law will look to substance and effect to determine the nature of a

^{12.} The Court of Appeals in the course of the oral argument, was itself unclear regarding the meaning of Judge Body's order "enforcing the ribitrator's award" and indicated that the order standing by itself could not necessarily be construed to enjoin a work stoppage. There was then pending in the Court of Appeals another appeal from Judge Body's subsequent order holding the union in contempt, which had not been consolidated with the earlier appeal because of respondent's objection. In view of the court's uncertainty at the argument, petitioner moved to consolidate the two appeals, but respondent objected, and the Court of Appeals denied the motion. Said contempt proceeding is the subject of No. 78, this Term.

judicial act or will be blinded by its wrappings. There is no doubt from the facts leading up to the order and from the manner in which it was enforced by contempt and fine, that it was requested, litigated and issued specifically to enjoin a work stoppage. The intent and policy of the Norris-LaGuardia Act may not be defeated by calling a

labor injunction by another name.

In Sinclair, a complaint was filed by the company under Section 301 of the National Labor Relations Act (29 U. S. C. A. 185(a)), based on a contract which provided for compulsory arbitration of all disputes and which also prohibited slowdowns, strikes or any form of work stoppages. Sinclair alleged that the union had engaged in a series of strikes and work stoppages, in violation of the no-strike clause and, therefore, sought an order enjoining the union's conduct.

The union successfully moved to dismiss the action under Section 4 of the Norris-LaGuardia Act, and the Court of Appeals sustained that dismissal. This Court affirmed, in a comprehensive opinion which answers all of the issues raised by the opinion of the Court below.

A key point in the case was the provision in the agreement requiring compulsory arbitration, and it was most strongly contended that Section 4 of the Norris-LaGuardia Act must be deemed inapplicable to prevent enforcement of the arbitration process which was alleged to be "a kingpin of federal labor policy", citing United Steelworkers of America v. American Mfg. Co., 363 U. S. 565, 4 L. Ed. 2d 1403; United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U. S. 574, 4 L. Ed. 2d 1409; United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U. S. 593, 4 L. Ed. 2d 1424. To that argument, this Court responded:

"To the extent that those cases relied upon the proposition that the arbitration process is 'a kingpin of federal labor policy,' we think that proposition was founded not upon the policy predilections of this Court

but upon what Congress said and did when it enacted Certainly we cannot accept any suggestion which would undermine those cases by implying that the Court went beyond its proper power and itself forged . . , a kingpin of federal labor policy' inconsistent with that section and its purpose. Consequently, we do not see how cases implementing the purpose of § 301 can be said to have freed this Court/ from its duty to give effect to the plainly expressed congressional purpose with regard to the continued application of the anti-injunction provisions of the Norris-LaGuardia Act. The argument to the contrary seems to rest upon the notion that injunctions against peaceful strikes are necessary to make the arbitration process effective. But whatever might be said about the merits of this argument, Congress has itself rejected it. In doing so, it set the limit to which it was willing to go in permitting courts to effectuate the congressional policy favoring arbitration and it is not this Court's business to review the wisdom of that decision." (U. S. at 213, L. Ed. at 452)

Notwithstanding the foregoing holding of this Court. the Court below draws the same conclusion from the Steelworkers trilogy which this Court specifically rejected in unequivocal terms. The Court below also extracts a brief excerpt from this Court's decision in Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 1 L. Ed. 2d 972, which it erroneously construes in favor of the enforcement of arbitration agreements without being bound by the Norris-LaGuardia Act. In this respect, also, the Court below completely ignores the full discussion of this Court in the Sinclair case regarding the Lincoln Mills decision. volved in the Lincoln Mills case was the question whether the parties could be compelled to submit a dispute to arbitration. The language of this Court is so clearly and decisively contrary to the conclusion drawn by the Court below that it would appear that the latter failed to carefully examine the Sinclair decision. Said this Court in Sinclair, in discussing the Lincoln Mills case:

"There the Court held merely that it did not violate the anti-injunction provisions of the Norris-La-Guardia Act to compel the parties to a collective bargaining agreement to arbitration where the agreement itself required arbitration of the dispute. In upholding the jurisdiction of the federal courts to issue such an order against a challenge based upon the Norris-La-Guardia Act, the Court pointed out that the equitable relief granted in that case—a mandatory injunction to carry out an agreement to arbitrate—did not enjoin any one of the kinds of conduct which the specific prohibitions of the Norris-LaGuardia Act withdrew from the injunctive powers of United States courts. An injunction against work stoppages, peaceful picketing or the nonfraudulent encouraging of those activities would, however, prohibit the precise kinds of conduct which subsections (a), (e) and (i) of § 4 of the Norris-LaGuardia Act unequivocally say cannot be prohibited." (U. S. at 212, L. Ed. at 451)

The Court below held the Norris-LaGuardia Act inapplicable because, it said, the District Court's order involved the equitable remedy of specific performance. The foregoing excerpt takes the ground from under the lower court's holding that the order for specific performance was not an injunction or a restraining order. In the above quotation this Court points out that an equitable order for specific performance is a "mandatory injunction".

Perhaps the most serious error committed by the Court below in its analysis of the Sinclair decision is the excerpt taken from that opinion (R. 121-122) which holds that an employer may obtain an order compelling a union to submit to arbitration and, from this, the Court below argues that the employer may enforce an arbitration award, even though such an order imposes a restraint on strikes or other protected activities. Unfortunately, the Court of Appeals stopped the quote in the middle of the paragraph. Had it

examined the remainder of the paragraph, it would have found that this Court's holding was exactly to the contrary, as follows:

"At the most, what is involved is the question of whether the employer is to be allowed to enjoy the benefits of an injunction along with the right which Congress gave him in § 301 to sue for breach of a collective agreement. And as we have already pointed out, Congress was not willing to insure that enjoyment to an employer at the cost of putting the federal courts back into the business of enjoining strikes and other related peaceful union activities." (U. S. at 214, L. Ed. at 452)

It is crystal clear that the Court below failed to correctly read and incorrectly interpreted this Court's decision in Sinclair.

The identical issue was presented to the District Court for the Southern District of New York in Marine Transport Lines, Inc. v. Curran, 55 L. C. 11748. There the shipping company obtained an arbitration award and sought judicial enforcement. The shipping company there made all the arguments presented here and, in addition, cited the lower court's decision in the instant case. The New York court declined to follow the decision of the Court of Appeals below and held, on the contrary:

"The court is being asked to enjoin a work stoppage. This is the reality of the situation, whatever may be the form of the proceeding. To the extent that Philadelphia Marine Trade Assn. v. International Longshoremen's Ass'n [54 LC para. 11,393] 365 F. 2d 295 (3rd Cir. 1966), cert. granted, 35 U. S. L. Week 3277 (1967), is to the contrary, I decline to follow that decision.

"In Sinclair the employer sought to enjoin a work stoppage before the arbitration took place in order to

make the arbitration effective. Here the employer seeks to enjoin a work stoppage after the arbitration has taken place and after the arbitrator has directed that the work stoppage cease. In my opinion, there is no significant difference between the two situations, as far as the power of this court is concerned. It inevitably follows from Sinclair that this court lacks jurisdiction to grant the relief requested here. Gulf & South American S. S. Co. v. National Maritime Union, supra." (55 L. C. para. 1178-1179)

Precisely the same point came before the Court of Appeals for the Fifth Circuit in Gulf & South American S. S. Co. v. National Maritime Union of America, 360 F. 2d 63 (1966). Chief Judge Christenberry dismissed the complaint on the authority of this Court's decision in Sinclair. In affirming, the Court of Appeals for the Fifth Circuit stated:

"The District Court dismissed the complaint on the ground that it was without jurisdiction to grant the injunctive relief sought in view of § 4 of the Norris-La-Guardia Act. 29 U. S. C. A. § 104. The court rejected the contention of the employer that § 301 of the Taft-Hartley Act, 29 U. S. C. A. § 185, was a pro tanto repealer of § 4 of the Norris-LaGuardia Act, and that the court thus had jurisdiction.

"The court relied on Sinclair Refining Co. v. Atkinson, 1962, 370 U. S. 195, 82 S. Ct. 1328, 8 L. Ed. 2d 440 as authority for this holding. That decision of the Supreme Court is direct authority on the question and is controlling. There the employer sought the injunction directly while here the injunction is sought under the guise of enforcing the award of an arbitrator but this is a distinction without a difference under the facts of this case, and any other result would be exalting form over substance." (360 F. 2d at 64-65)

The decision of the Court below is clear error. The district court had no jurisdiction to entertain the complaint because of the nature of the relief sought. There was no refusal on the part of the union to submit to arbitration. On the contrary, the union was not only willing but anxious to submit each of the disputes to arbitration, as was required under the agreement. It was the employer who refused to submit the subsequent disputes to arbitration and schemed, instead, to extend the decision in the first dispute to all subsequent disputes. This proceeding was designed not only to frustrate the arbitrations sought by the union, but also to enjoin all work stoppages which might arise out of those disputes. Under this Court's decision in Sinclair this may not be done, and upon this ground alone the decision of the Court below should be reversed and the complaint dismissed.

II. The Complaint Should Have Been Dismissed for Mootness.

When the complaint was filed in this case, it was based on an alleged work stoppage on July 29, 1965. When the matter was brought to the attention of the district judge, the longshoremen had already returned to work and the

matter was clearly moot.

The district judge recognized and conceded that this action was most because the men had gone back to work, and there was nothing further to be done (R. 61). Indeed, it was specifically because the case was most, said Judge Body, that he did not read the decision of this Court in Sinclair v. Atkinson, 370 U. S. 195, 8 L. Ed. 2d 440 (R. 82). Yet, he refused to dismiss the suit. This was a further excess of jurisdiction.

In Amalgamated Association of Street, Electric Railway and Motor Coach Employees v. Wisconsin Employment Relations Board, 340 U. S. 416, 95 L. Ed. 389 (1951), this Court vacated an award of an arbitrator settling a labor dispute, holding that since the case had become moot (be-

cause the immediate dispute had been settled), there was no subject matter upon which the judgment of the court could operate, so that the judgment below was vacated. The Board argued that Wisconsin courts (where the case originated) have a practice of deciding questions of importance even though the case has become moot, and urged the Supreme Court to follow this practice. Mr. Chief Justice Vinson said: "But whatever the practice in Wisconsin courts, 'A federal court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it. United States v. Alaska Steamship Company, 253 U. S. 113.

The District Judge, notwithstanding these decisions, improperly "retained jurisdiction" so that "if anything arises", he would "handle it at that time". He was clearly in error in refusing to dismiss for mootness.

III. The Refusal of the District Court to Clarify or Explain the Nature of the Conduct Covered by Its Mandatory Order and to Give Reasons for Its Issuance and Make Findings of Fact and Conclusions of Law Is Most Prejudicial and in Flagrant Violation of F. R. C. P. 52(a) and 65(d).

Rule 52(a) applies to all actions tried without a jury, including equitable actions for specific performance. The basic requirements of that Rule are:

"In all actions tried upon the facts without a jury or with an advisory jury the court shall find the facts

^{13.} Indeed, the same practice has been established by the Supreme Court when a controversy becomes moot even during the appellate stage of litigation, whereupon all prior orders should be vacated and the cause remanded with instructions to dismiss. Brotherhood of Railroad Trainmen v. Chicago & I. M. R. Co., 375 U. S. 18, 11 L. Ed. 2d 39 (1963); Todd v. Joint Apprenticeship Committee, 332 F. 2d 243 (1964).

specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58."

Where an injunction or restraining order is involved, Rule 65(d) provides even more stringent requirements to insure complete clarity and the basis for such orders. Rule 65(d) states:

"Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; . . ."

The order of the District Judge merely provided "the arbitrator's award . . . be specifically enforced by defendant, International Longshoremen's Association, Local 1291, and the said defendant is hereby ordered to comply with and to abide by the said award."

The District Judge failed and refused to make findings of fact and separate conclusions of law as required by Rule 52, and he further specifically refused to state first whether the order was, in fact, an injunction or some form of restraining order, and even more particularly, he refused to state further whether the order enjoined a strike or a work stoppage or arbitration, or in any way to indicate the act or acts sought to be restrained, as Rule 65(d) specifically requires. Nor did the court give any reasons whatever for the issuance of the order, as required by Rule 65(d).

The arbitrator's award merely interpreted Section 10(6) of the agreement and denied the union's claim for a four-hour guarantee. Did "enforcement" of his award mean that the union was restrained from striking, from taking all other disputes to arbitration again, from picket-

ing, or from engaging in any of the other activities protected by the Labor Act? Rules 52(a) and 65(d) were specially designed to cope with this type of situation. Those Rules unequivocally require the court to make its position crystal clear so that there can be no doubt in the minds of the parties as to what act or acts are restrained or in any way affected. The Trial Judge below dangled the ax over the head of the defendant and required the defendant to speculate on what the court had in mind. The fact that the District Judge intended the order to restrain a work stoppage did not become apparent until after he entered an order of contempt in the later proceeding against not only the union but its officers and members because of the "mass action" of the members in causing a work stoppage.

The Court of Appeals below would excuse the action of the District Judge on the ground first that the order was not an injunction, but was one of "specific performance of an arbitration award".14

The Court below also sought to excuse the failure of the District Judge to comply with the rules on the ground that such failure was "inconsequential" and "minor and in no way decisional". This is an incredible and gravely erroneous conclusion in view of the fact that the alleged violation of the court's order resulted in a catastrophic blow to the defendant local union which, if made effective, puts the union out of business.

It is difficult to imagine anything more "consequential" and "decisional".

In Hook v. Hook & Ackerman, Inc., 213 F. 2d 122, the Court of Appeals below, acting under Rule 52(a), set aside a restraining order because the memorandum opinion of the district court did not clearly state the ground upon

^{14.} This Court stated in Sinclair Refining Co. v. Atkinson, 370. U. S. 195, 8 L. Ed. 2d 440 that equitable relief such as an order for specific performance constitutes a "mandatory injunction".

which the injunction had been issued. Bule 65(d) requires that every injunction or restraining order set forth the reasons for its issuance and state specifically the act or acts sought to be restrained. Significantly, the Court below, in the case of Mayflower Industries v. Thor Corporation, 182 F. 2d 800, 801, held that this requirement is mandatory and that when the rulemakers used the word "every", they did not mean "anything less are what they said".

The Courts below committed the most serious and most prejudicial error in ignoring and flouting the requirements of Rules 52(a) and 65(d).

CONCLUSION.

The District Court took and "retained" jurisdiction of this case without examining the Norris-LaGuardia Act and this Court's decision in the Sinclair case, which clearly showed that the court was lacking in jurisdiction. He thereafter proceeded to make his own rules of procedure and completely ignored and violated the key rules of Federal Procedure relating to the filing of a complaint and the entry of orders and decrees and findings and conclusions. It is imperative that this Court strike down the lower court's excursion into anarchy.

The decision of the Court below should be reversed and the complaint dismissed.

Respectfully submitted,

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FREEDMAN, BOBOWSKY AND LORRY,
Counsel for Petitioner.

^{15.} The Court of Appeals below states that the District Judge could not file findings and conclusions because petitioner immediately appealed the order. The Court overlooks the fact that these findings are required to be filed with the order and may even be filed after the appeal. Gibbs v. Buck, 307 U. S. 66, 83 L. Ed. 1111.

APPENDIX A.

Norris-LaGuardia Act, 29 USCA.

§ 104. Enumeration of specific acts not subject to restraining orders or injunctions.

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

- (a) Ceasing or refusing to perform any work or to remain in any relation of employment;
- (b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;
- (c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;
- (d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;
- (e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;
- (f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute:

- (g) Advising or notifying any person of an intention to do any of the facts heretofore specified;
- (h) Agreeing with other persons to do or not to do any to do any of the acts heretofore specified;
- (i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. Mar. 23, 1932, c. 90, § 4, 47 Stat. 70 (Norris-LaGuardia Act).

Federal Rules of Civil Procedure.

RULE 52.

FINDINGS BY THE COURT.

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclutions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b). As amended December 27, 1946, eff. March 19, 1948; Jan. 21, 1963, eff. July 1, 1963.

RULE 65.

INJUNCTIONS.

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servents, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

SUPREME COURT, U. IN

Office Supreme Court, MA

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JOHN F. DAVIS, CENTR

IN THE

Supreme Court of the United States

October Term, 1967.

No. 34.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,

Petitioner,

PHILADELPHIA MARINE TRADE ASSOCIATION,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENT.

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Counsel for Respondent.

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Supreme Court of the United States

QCTOBER TERM, 1967.

Nő. 34.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,

Petitioner.

PHILADELPHIA MARINE TRADE ASSOCIATION, Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENT.

QUESTION PRESENTED.

Where an employer association and a union entered into a collective bargaining agreement which contained a broad, all inclusive arbitration clause requiring the submission of all unresolved disputes to final and binding arbitration and shortly after the execution of the agreement a dispute arose over an interpretation of a clause in the agreement which was submitted to the Impartial Arbitrator who ruled in favor of the employer association, did the Court below have jurisdiction under Section 301 of the Labor Management Relations Act, 29 U. S. C. A. 185, in an action for specific performance to enter an order enforcing the Arbitrator's Award where it was uncontradicted that the union refused to comply with the Award and took the position that it was not bound by the Award.

STATUTE INVOLVED.

The Labor Management Relations Act, Section 301(a), 61 Stat. 156, 29 U.S. C. A. 185, which provides as follows:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE.

This was an action by respondent, Philadelphia Marine Trade Association (PMTA), under Section 301 of the Labor Management Relations Act, 29 U. S. C. A. 185, for specific performance to enforce an Arbitrator's Award.

PMTA is a multi-employer association which acts as the collective bargaining agent for its members consisting of steamship owners, operators, agents, stevedores and other maritime companies in the Port of Philadelphia. Petitioner (Union) represents the deepsea longshoremen on the Philadelphia waterfront. On February 11, 1965, the respondent and petitioner entered into a new collective bargaining agreement which extended retroactively from October 1, 1964 to September 30, 1968 (R. 6-9). This was a "novel" and "unusual" contract since it established for the first time a new system for hiring longshoremen in Philadelphia (R. 36).

Previously the longshoremen were hired on a particular day at various "shape-up" points along the waterfront (R. 36). Men needed for an 8:00 A. M. start were hired at 7:30 A. M., that morning; men required for a 1:00 P. M.

start were hired at 7:55 A. M., that morning. Once a man was hired for either an 8:00 A. M. or a 1:00 P. M. start, he was guaranteed four hours pay for the morning or afternoon period but if he was not hired, he received no pay at all for reporting at the "shape-up" (R. 11).

Under the new contract (R. 6-9), a "day-before hire" system was inaugurated. Under this system, longshoremen were registered in regular gangs and for the most part orders were given the previous day to commence work the next day at a particular job site (R. 6-7). Replacements for gangs which showed up short were obtained from a pool of men who assembled at a joint dispatching site. The contract provided that gangs which were hired for a Monday or a day following a holiday could be cancelled by 7:30 A. M. that day if the vessel did not arrive.

In addition, the contract also provided in a separate section from the above provision that gangs which were ordered for an 8:00 A. M. start Monday through Friday could be "set back" at 7:30 A. M. for a 1:00 P. M. start. Where this set back was invoked, the men were guaranteed four hours pay at 1:00 P. M. and one hour's pay for reporting in the morning, or a total of five hours guaranteed pay. This was a radical change from all of the preceding contracts. This provision was contained in Section 10(6) of the contract which provided as follows (R. 7):

"Gangs ordered for an 8 A. M. start Monday through Friday can be set back at 7:30 A. M. on the day of work to commence at 1 P. M. at which time a four-hour guarantee shall apply. A one-hour guarantee shall apply for the morning period unless employed during the morning period."

Section 10(5) provided:

[&]quot;For work commencing at 8:00 A. M. on Monday or at 8:00 A. M. on the day following a holiday, employers to have the right because of non-arrival of a vessel in port to cancel the gangs by 7:30 A. M." (R. 7)

As can be readily seen, there were no qualifications attached to the employer's invoking the set back rights under Section 10(6) of the contract.

However, on April 26, 1965, a dispute arose between the PMTA and the Union over the interpretation of this section of the contract (R. 4-5). Gangs which were hired for an 8:00 A. M. start that day were notified by the employer to report for work at 1:00 P. M. The Union took the position that the "set back" clause, Section 10(6), applied only in the case of a non-arrival of a vessel in port and since the vessel was in port that day the Union insisted that the men could not be set back. The PMTA took the position that the gangs could be set back without qualification under the above section of the contract (R. 20-26).

This dispute was submitted to the Grievance Committee under the contract and when it could not be resolved, it was submitted to the Impartial Arbitrator in accordance with the broad arbitration clause in the contract.² Arbitration hearings were held before the Impartial Arbitrator on April 30, May 3, and May 5, 1965, at which time voluminous testimony was taken as to the interpretation of the contract clause in dispute (R. 16-31). At the outset of the hearing on April 30, 1965, it was agreed by both parties that the Arbitrator's decision would be "final and binding" (R. 48, 50-51, 115 and Plaintiff's Exhibit No. 1).

On June 11, 1965, the Arbitrator issued his Award. In a "thorough, well reasoned decision" (R. 116), the Impartial Arbitrator analyzed the testimony of both parties, set forth the respective contentions of the parties and ruled in favor of respondent that the set back "may be invoked by the Employer without qualification" (R. 30-31).

^{2.} Section 28 of the contract provided for arbitration of "All disputes and grievances of any kind or nature whatsoever arising under the terms and conditions of this agreement, and all questions involving the interpretation of this agreement . . ." (R. 12-13).

^{3.} The Arbitrator considered all of the contentions asserted by the Union, including its contention that the so-called inclement

However, on Friday, July 30, 1965, an identical issue arose over the set back clause and the Arbitrator's Award. An Employer member of PMTA, in accordance with Section 10(6) of the contract and the Award of the Impartial Arbitrator, elected to set back gangs which had been ordered the previous day for an 8:00 A. M. start. The Union refused to permit these men to report to work at 1:00 P. M. and the vessel involved was forced to remain idle (R. 5). During the morning of July 30, the Executive Secretary of PMTA, Alfred Corry, talked to the President and two business agents of the Union regarding this dispute. The President of the Union, Richard Askew, advised Corry that the Arbitrator's Award relating to the set back clause "only applied to the non-arrival of a ship" (R. 64). When Corry reminded him that the Arbitrator's Award applied "without qualification" Askew said: f'it does not and they were not going to live by it" (R. 65). Shortly

weather clause applied. This contention is specifically referred to in the Award (R. 24). The inclement weather clause was section 9(h) in the prior agreement and the Union contended that it "remained intact". In fact, the president of the Union read a prepared statement covering 21 pages in which it was forceably argued that the inclement weather clause applied and that the men were entitled to four hours pay for reporting in the morning where they were set back because of weather. Furthermore, contrary to petitioner's statement (Brief p. 3) section 9(h) did not provide for "a four-hour guarantee". That section specifically provided for "the applicable guarantee" (R. 12). Moreover, under section 16 of the existing agreement in case of conflict, section 10(6), the set back clause, prevailed over section 9(h) (R. 9).

In addition, the Arbitrator did not decline to hear summation from counsel nor did he state that "he did not desire any briefs from the parties" as asserted by petitioner (Brief pp. 3.4). On the contrary, he gave both parties the opportunity to summarize and merely stated that he did not think briefs were "necessary". All of the testimony before the Arbitrator was transcribed, covering three volumes of 334 pages. It was not made a part of the record in this case but can be provided if this Court desires to review it.

*It should also be noted that the Union never took any legal steps to set aside the Arbitrator's Award and that in this appeal, petitioner is attempting to re-argue the award in spite of the fact that the merits of that award are not before this Court.

after this separate conversation between Corry and Askew, Corry called the Central Dispatching Office and had another conversation with Askew and two business agents of the defendant Union, who told him that "they were not going to abide by the Arbitrator's decision" (R. 65).

On Monday, August 2, 1965, the PMTA filed its complaint in the District Court (R. 3-6). The complaint referred to the contract between the parties, the Arbitrator's Award covering the set back clause, the dispute of July 30, 1965 in which the PMTA was advised "that the union does not agree with the Arbitrator's Award and does not intend to comply with the terms of such Award", and prayed that "in view of the stated and confirmed intent of the union to disregard the Arbitrator's Award dated June 11, 1965 . . . that the Court set an immediate hearing and enter an order enforcing the Arbitrator's Award" The complaint did not pray for any injunction against strikes, work stoppages, or picketing as contended by petitioner.

A hearing was fixed for Tuesday, August 3, 1965, at which time the Court took testimony regarding the Union's refusal to abide by the Arbitrator's Award. However, the Court decided not to issue any order since the men who had been hired to work the vessel on July 30 returned to work on the morning of the Court's hearing. The Court was advised that under "economic duress" the vessel's operators paid the men wages to which they were not entitled because the operators could not afford to keep the vessel idle any longer (R. 40; 43-44). The Court also was advised by counsel for the Union that the Union was bound by the Arbitrator's Award, contrary to the position taken by the Union's officers, and based on these assurances the Court decided to keep the case open for either side to bring to the Court's attention any further dispute which occurred involving the Arbitrator's Award (R. 46: 73).

^{4.} In assuring the Court that the Union was bound by the Arbitrator's Award, counsel for the Union said during the hearing on August 3, 1965, that:

On September 13, 1965, another identical dispute arose involving the set back clause and the Arbitrator's Award. Four employer members of PMTA, in accordance with Section 10(6) of the contract and the Award of the Impartial Arbitrator, elected to set back gangs which had been hired for an 8:00 A. M. start that day. In spite of the assurances given to the District Court by counsel for the Union at the hearing on August 3, 1965, that the Union

"Mr. Weiner: —We, that is, the union, make no bones about the fact that they are unhappy with the Arbitrator's Award, but we realize that we are stuck with it" (R. 35).

"Mr. Weiner: —Now, these two provisions—primarily, the set back provision—were the subject of an Arbitrator's Award back in April, and the Arbitrator decided contrary to the union's position that this set back could be invoked for any reason, not only for non-arrival of a vessel or for inclement weather. It had been the union's position—it still is—although it is moot now—that the set back could only be for specific reasons, either for non-arrival of a vessel, for inclement weather, or for compelling reasons like that which was not within the control of the Employer" (R. 38).

"Mr. Weiner: —And we have never taken the position. We have taken the position that although we don't like this award we are going to follow it, but we are also going to insist that the employer follow the award and follow the contract to the letter" (R. 40).

"Mr. Weiner: —Before your Honor indicated maybe I was giving double talk; I wasn't. The union has never stated and it is not the union's position today that we will not live up to this Arbitrator's Award, even though we don't like it, that we want both sides to live up to the contract. It is not a question only of the union living up to it. Both sides should live up to it. We are willing to live up to it. The men are back to work" (R. 45)

"Mr. Adler: —We are bound by the Arbitrator's Award, to the Award which he has set forth. He has said that the language of 10(6)—he has defined 10(6) as being clear and unequivocal and it should be enforced in the wording clearly expressed. It speaks for itself we are so bound" (R. 59).

"The Court: —The only thing that is clear to me that you said—Mr. Weiner said—you are bound by this Arbitration Award. Now, then—

"Mr. Adler: -For whatever that award speaks" (R. 60).

was bound by the Arbitrator's Award, the President of the Union, Askew, announced on the public address system at the Central Dispatching Office that the gangs which had been set back for work at 1:00 P. M. that day should not report for work that day but should report the following day. He also announced that gangs which had been properly cancelled under Section 10(5) of the contract that day and instructed to report for work the following day at 8:00 A. M., should report for work that day at 1:00 . P.M. (R. 91-97).

A total of fifteen gangs employed by four separate companies involving approximately three hundred and thirty men and four ships were affected by the above announcement of the President of the Union. Accordingly. counsel for PMTA, not knowing what would happen at 1:00 P. M., that day, notified the District Court during the morning of September 13 of the crisis which had developed because of the defiant announcement made by the President of the Union. The Court was notified in accordance with the agreement reached at the hearing on August 3, 1965 (R. 46; 73). The District Court set a hearing for 2:00 P. M. that day but this hearing was postponed until the following day in order to give counsel for petitioner an opportunity to consult with his client (R. 83). The hearing scheduled for September 14 was then postponed until September 15, 1965 because of the press of the Court's business.

At the hearing on September 15, there were no strikes, work stoppages, or picketing on the Philadelphia waterfront.⁵ The District Court heard the uncontradicted testi-

^{5.} By the afternoon of September 13, all the gangs, except four employed by one company, reported for work in spite of the Union's announcement. The Court was requested to enter an order enforcing the award to avoid harassing tactics of a similar nature in the future (R. 94, 99, 104). Counsel for respondent stated:

[&]quot;Your Honor, even if all the gangs for all of the employers had reported for work at 1:00 o'clock we would still want to continue with this hearing to have an order handed down to make it it perfectly clear to the defendant that it is required to comply with the Arbitrator's Award because we cannot operate

mony of Corry that he talked to Askew on September 13 and that Askew confirmed to him that he had made the announcement referred to above advising that men who had been set back that day were not to report to work at 1:00 P. M. that afternoon (R. 91-94). Cerry also testified that Askew further stated: "that the set back only applied to non-arrival of a ship and that he wanted to re-arbitrate" (R. 100). In addition, Evans, the Chief Dispatcher for the PMTA at the Joint Dispatching Office, testified that he was present and heard Askew make the announcement referred to above (R. 95-97). He testified that Askew said: "That the gangs that were set back at 1 o'clock on that date were to report the following day at 8:00 A. M. The gangs that were cancelled out that morning were to report at 1 o'clock that same day" (R. 97). All of the respondent's testimony at the hearings on August 3, and September 15, 1965, was uncontradicted as the petitioner did not introduce any evidence to contradict or rebut any of the respondent's testimony. Accordingly, the District Court on September 15, 1965, entered the order appealed from which simply enforces the Award of the Impartial Arbitrator and requires petitioner "to comply with and to abide by the said Award" (R. 113).

in this port if we are going to be continually harassed by the Union in taking the position that they are not going to abide by an Arbitrator's Award, and we cannot continue to live under a situation where from one day to another we do not know whether a similar announcement will be made telling the men not to report for work." (R. 78)

SUMMARY OF ARGUMENT.

Federal Courts have jurisdiction to enforce arbitration awards under Section 301 of the Labor Management Relations Act. It was agreed in this case that the award would be final and binding. After it was rendered it became part of the collective bargaining agreement and petitioner's subsequent refusal to abide by the award was a breach of

contract within the literal term of Section 301.

This Court has sanctioned and approved the enforcement of arbitration awards under Section 301. The Lincoln Mills case (infra) promulgated the guidelines for the future enforcement of arbitration agreements. In United Steelworkers v. Enterprise Corp. (infra) and Retail Clerks v. Lion Dry Goods, Inc. (infra); this Court specifically approved the enforcement of arbitration awards. Atkinson v. Sinclair Refining Co. (infra) upon which petitioner places sole reliance is inapposite because it involved an injunction against work stoppages. There was no award involved in that case since the parties did not ever proceed with arbitration. This case was for specific performance of the award based upon petitioner's uncontradicted statements that it did not like the award, that it was not going to be bound by the award and that it did not intend to comply with the award. There were no work stoppages in this case at the time the order enforcing the award was issued.

Voluntary arbitration is the kingpin of our national labor policy. In addition to Section 301, this national labor policy is also expressed in Sections 201 and 203(d) of the Labor Management Relations Act. An Arbitrator's Award is part and parcel of the arbitration process which is so highly favored in our labor laws. The failure to enforce a final and binding award would wreck our national labor policy and cause chaos in labor relations in this country. No purpose would be served in compelling parties to pro-

ceed with arbitration unless the resulting award could be enforced by either party if it is violated. The prohibitions against injunctions contained in the Norris-LaGuardia Act have no application to this case. Actually, the Norris-LaGuardia Act, like the Labor Management Relations Act, was intended to foster the settlement of disputes voluntarily by arbitration.

ARGUMENT.

The Court Below Had Jurisdiction Under Section 301 of the Labor Management Relations Act, 29 U. S. C. A. 185, to Enforce the Arbitrator's Award Where the Order Did Not Enjoin Any Strike, Work Stoppage or Picketing But Was Directed against the Officers of the Union Who Refused to Abide by a Final and Binding Award.

In urging that there is no jurisdiction under Section 301 of the Labor Management Relations Act to enforce an Arbitrator's Award where the parties have voluntarily agreed in a collective bargaining contract to submit all their unresolved disputes to arbitration and have further agreed that the Arbitrator's Award would be final and binding, the petitioner is asking this Court to reverse its prior decisions interpretating Section 301, to ignore the leading commentators on the subject, and to repudiate the will of Congress as expressed in Sections 201, 203(d) and 301 of the Labor Management Relations Act. In short, the petitioner is asking this Court to nullify the established national labor policy of settling disputes voluntarily by arbitration and to return the settlement of industrial disputes to a jungle of guerilla warfare with no established rules or regulations.

At the outset, it should be pointed out that the order which was entered in this case did not and could not have enjoined any strike, work stoppage, or picketing since there was none in existence when the order was entered. The order was strictly affirmative and mandatory in nature requiring the petitioner "to comply with and to abide by the said Award" (R. 113). The order was directed against the officers of petitioner who despite the assurances given to the Court at the hearing on August 3, 1965 persisted in their refusal to abide by the Award. Before the order was

entered, respondent made it clear that it was not "seeking an injunction" and that it was not "seeking to enjoin work stoppages" (R. 111). Respondent recognized that if petitioner did not comply with the "Court's order then subsequent proceedings will have to be taken".

(A) Prior Decisions of This Court.

In the leading case, Textile Workers Union v. Lincoln Mills, 353 U. S. 448, 77 S. Ct. 912, 1 L. ed. 2d 972 (1957), this Court set forth the jurisdictional powers granted to Federal Courts under Section 301 and laid down the guidelines for future suits under Section 301. In analyzing the divergent views of lower courts prior to that decision, this Court said:

"Other courts—the overwhelming number of them—hold that § 301(a) is more than jurisdictional—that it authorizes federal courts to fashion a body of federal

6. Counsel for respondent stated:

"Mr. Scanlan: —Before Mr. Freedman says anything, Your Honor, I would like to say one other thing: We are not seeking an injunction. We are not seeking to enjoin work stoppages. It is quite clear what we are seeking is the enforcement of this Arbitrator's Award and asking that the defendant be ordered to comply with the said Award. That's what we are seeking.

"The Court: —In the event they do not comply with the said Award—

"Mr. Scanlan: —That is an event we will have to face, Your Honor. If the order is issued by the Court and the defendant elects not to comply with the Court's order then subsequent proceedings will have to be taken." (R. 111)

7. Petitioner is confusing the subsequent contempt proceedings which were taken almost six months later when petitioner violated the Court's order in an attempt to establish retroactively that the order involved in this appeal enjoined a work stoppage. The contempt proceedings are the subject of a separate appeal, No. 78, with argument to follow this appeal. These proceedings were taken in accordance with the statement of this Court in footnote 23 of Sinclair Refining Company v. Atkinson, 370 U. S. 195, 82 S. Ct. 1328, 8 L. ed. 2d 440 (1962).

law for the enforcement of these collective bargaining agreements and includes within that federal law specific performance of promises to arbitrate grievances under collective bargaining agreements. Perhaps the leading decision representing that point of view is the one rendered by Judge Wyzanski in Textile Workers Union v. American Thread Co., 113 F. Supp. 137. That is our construction of § 301(a), which means that the agreement to arbitrate grievance disputes, contained in this collective bargaining agreement, should be specifically enforced." (emphasis supplied) (U. S. at 450-451, L. ed. at 977-978)

In reviewing the legislative history of Section 301, this Court pointed out that:

- ". . . Congress was also interested in promoting collective bargaining that ended with agreements not to strike. The Senate Report, supra, p. 16, states:
 - '. . . Consequently, to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the Federal Courts . . .'
 (U. S. at 453-454, L. ed. at 979)
- "... As stated in the House Report, supra, p. 6, the new provision 'makes labor organizations equally responsible with employers for contract violation and provides for suit by either against the other in the United States district courts . . . " (U. S. at 454, L. ed. at 979)

"Plainly the agreement to arbitrate grievalice disputes is the quid pro quo for an agreement not to strike. Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only that way." (emphasis supplied) (U. S. at 455, L. ed. at 979)

With respect to the substantive law to be applied in suits under Section 301, this Court stated:

"We conclude that the substantive law to apply in suits under § 301(a) is federal law which the courts must fashion from the policy of our national labor laws. The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem." (U. S. at 456-457, L. ed. at 980-981)

In the Lincoln Mills decision, this Court unquestionably sanctioned a broad construction of Section 301 which would include the specific enforcement of an Arbitration Award which was part and parcel of the collective bargaining agreement. Any attempt to limit Lincoln Mills to jurisdiction to compel the parties to go to arbitration but with no power to enforce the resulting Arbitration Award would be self-defeating. There would be no reason for the parties to proceed with arbitration if the award could be disregarded by either party: The chaotic effect such a situation would have on labor arbitration in this country is readily apparent.

In United Steelworkers v. Enterprise Corp., 363 U.S. 593, 80 S. Ct. 1358, 4 L. ed. 2d 1424 (1960), this Court affirmed the decision of the lower Court which granted specific enforcement of an Arbitrator's Award. There this Court said:

"A mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award . . ." (U. S. at 598, L. ed. at 1428)

In the instant case, there is no ambiguity whatsoever in the Arbitrator's Award. Consequently, the award was properly enforced.

In United Steelworkers v. Warrior & Gulf Navigation Company, 363 U. S. 574, 80 S. Ct. 1347, 4 L. ed. 2d 1409 (1960), this Court reaffirmed its broad interpretation of Section 301 by stating that:

"We held in Textile Workers Union v. Lincoln Mills, 353 U. S. 448, 1 L. ed. 2d 972, 77 S. Ct. 912, that a grievance arbitration provision in a collective agreement could be enforced by reason of § 301(a) of the Labor Management Relations Act and that the policy to be applied in enforcing this type of arbitration was that reflected in our national labor law. The present federal policy is to promote industrial stabilization through the collective bargaining agreement. A major factor in achieving industrial peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement . . . Here arbitration is the substitute for industrial strife . . ." (U. S. at 577-578, L. ed. at 1414)

In Dawd Box Co. v. Courtney, 368 U. S. 502, 82 S. Ct. 519, 7 L. ed. 2d, 483 (1962), this Court said:

"The Labor Management Relations Act of 1947 represented a far-reaching and many-faceted legislative effort to promote the achievement of industrial

peace through encouragement and refinement of the collective bargaining process. It was recognized from the outset that such an effort would be purposeless unless both parties to a collective bargaining agreement could have reasonable assurance that the contract they had negotiated would be honored. Section 301(a) reflects congressional recognition of the vital importance of assuring the enforceability of such agreements." (emphasis supplied) (U. S. at 509, L. éd. at 488)

"If this kind of strike settlement were not enforceable under § 301(a), responsible and stable labor relations would suffer, and the attainment of the labor policy objective of minimizing disruption of interstate commerce would be made more difficult. It is no answer that in particular case the agreement might be enforceable in state courts: a main goal of § 301 was precisely to end 'checkerboard jurisdiction.'" (U. S. at 27, L. ed. at 510)

"We conclude that the petitioners' action for alleged violation of the strike settlement agreement was cognizable by the District Court under §301(a)." (U. S. at 29-30, L. ed. at 511)

The above decision establishes that District Courts have jurisdiction under Section 301 to compel compliance

with arbitration awards and is dispositive of the issue involved in the instant case.

In Teamsters Union v. Lucas Flour Co., 369 U. S. 95, 82 S. Ct. 571, 7 L. ed. 2d 593 (1962), this Court held that a strike over a dispute which a contract provides shall be settled exclusively by binding arbitration is a breach of contract despite the absence of a no-strike clause, saying:

"To hold otherwise would obviously do violence to accepted principles of traditional contract law. Even more in point, a contrary view would be completely at odds with the basic policy of national labor legislation to promote the arbitral process as a substitute for economic warfare." (U.S. at 105, L. ed. at 600)

In Atkinson v. Sinclair Refining Co., 370 U. S. 238, 82 S. Ct. 1318, 8 L. ed. 2d 462 (1962), in referring to suits under Section 301, this Court said:

"Consequently, in discharging the duty Congress imposed on us to formulate the federal law to govern § 301(a) suits, we are strongly guided by and do not give a niggardly reading to § 301(b). "We would undercut the Act and defeat its policy if we read § 301 narrowly". (U. S. at 248-249) L. ed. at 470)

Petitioner places its sole reliance on the other Atkinson v. Sinclair Refining Co., 370 U. S. 195, 82 S. Ct. 1328, 8 L. ed. 2d 440 (1962), decided the same day as the above case. However, that decision is completely inapposite to the facts in the instant case. In that case, the employer specifically sought an injunction to enjoin "work stoppages" and "strikes" which occurred on nine separate occasions over a period of nineteen months. Sinclair-averred in its complaint in this case that the contract provided for "compulsory, final and binding arbitration", but not any of these disputes were submitted to arbitration. Consequently, there was no arbitration award to enforce and in Sinclair's suit it did not even ask the Court to compel the Union to submit the disputes to arbitration. In short, the employer sought an injunction without even

attempting to exhaust the arbitration process. This Court simply refused to sanction an injunction under those circumstances. But in doing so, this Court pointed out in unmistakably clear language that it was reaffirming its prior decisions covering the enforcement of arbitration agreements. In referring to its decisions in Lincoln Mills, United Steelworkers v. Enterprise Wheel & Car Corp. and United Steelworkers v. Warrior & Gulf Navigation Co. (supra), this Court said:

"To the extent that those cases relied upon the proposition that the arbitration process is a 'kingpin of federal labor policy', we think that proposition was founded not upon the policy predilections of this Court but upon what Congress said and did when it enacted \$301. Certainly we cannot accept any suggestion which, would undermine those cases . . ." (emphasis supplied) (U. S. at 213, L. ed. at 452)

Petitioner's argument, if followed, would not only undermine the above cases, but would knock out the "kingpin of federal labor policy".

In Drake Bakeries v. Local 50, 370 U. S. 254, 82 S. Ct. 1346, 8 L. ed. 2d 474 (1962), which was decided the same day as the Atkinson decision (supra) relied upon by petitioner, this Court said:

"In passing § 301, Congress was interested in the enforcement of collective bargaining contracts since it would 'promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace' (S. Rep. No. 105, 80th Cong, 1st. Sess. 17). It was particularly interested in placing 'sanctions behind agreements to arbitrate grievance disputes'. The preferred method for settling disputes was declared by Congress to be '[f]inal adjustment by a method agreed upon by the parties' (§ 203(d) of the Act, 29 USC § 173(d)). 'That policy can be effectuated only if the means chosen by the parties for settlement

of their differences under a collective bargaining agreement is given full play.'" (emphasis supplied) (U.S. at 263, L. ed. at 480)

And in Wiley & Sons v. Livingston, 376 U. S. 543, 84 S. Ct. 909, 11 L. ed. 2d 898 (1964), this Court said:

"This Court has in the past recognized the central role of arbitration in effectuating national labor policy. Thus, in Warrior & Gulf Navigation Co., supra, 363 US at 578, 4 L. ed. 2d at 1415, arbitration was described as 'the substitute for industrial strife' and as 'part and parcel of the collective bargaining process itself'. . ."
(U. S. at 549, L. ed. at 904)

"The preference of national labor policy for arbitration as a substitute for tests of strength between contending forces could be overcome only if other considerations compellingly so demanded. We find none ..." (U. S. at 549-550, L. ed. 904)

"Compare the principle that when a contract is scrutinized for evidence of an intention to arbitrate a particular kind of dispute, national labor policy requires, within reason, that 'an interpretation that covers the asserted dispute' . . . be favored." (U. S. at 550, L. ed. at 905)

Petitioner's references to Marine Transport Lines, Inc. v. Curran, 55 L. C. 11,748 and Gulf & South American S. S. Co. v. National Maritime Union of America, 360 F. 2d 63 (1966) are completely inapplicable to this case.

In the Marine Transport Lines case (supra), the Arbitrator's Award admittedly enjoined a work stoppage and this was the sole and exclusive purpose for that action.

In the Gulf & South American S. S. Co. case (supra), the arbitrator's award was not enforced simply because the arbitrator had no jurisdiction to issue it in the first place. This is unmistakably clear from the Court's decision where it is stated that:

"The question here turns on the jurisdiction of the arbitrator... There was no showing of jurisdiction in the arbitrator.... The power of the arbitrator lies in the subject matter being drawn from the agreement to arbitrate and absent such power or jurisdiction, there may be no judicial enforcement." (id. at 65)

(B) Commentaries on the Enforcement of Arbitrator's Awards Under Section 301.

The enforcement of Arbitrator's Awards under Section 301 has been the subject of considerable comment since this Court's decision in *Lincoln Mills (supra)*. Most of the commentators agree that it is absolutely essential to enforce these awards in order to preserve and perpetuate our national labor policy favoring voluntary arbitration.

Givens in "Section 301, Arbitration and the No-Strike

Clause", 11 Lab. L. J. (1960) states that:

"Thus the basic guideposts of the law of grievance arbitration under Section 301 are now clear: Federal jurisdiction exists both to enforce agreements to arbitrate and to enforce the resulting awards, and the jurisdiction and decisions of arbitrators will be upheld whenever there is any reasonable basis to do so in the collective agreement." (id. at 1009)

"In the light of these decisions, it is now clear that the federal courts have inrisdiction not only to enforce agreements to arbitrate in collective bargaining contracts, but also to enforce the resulting awards; and that the authority granted to the arbitrator by the parties to such agreements to interpret the agreements will be upheld and respected by the courts as vital to the workings of collective bargaining." (id. at 1020)

Aaron in "Strikes in Breach of Collective Agreements: Some Unanswered Questions" 63 Colum. L. Rev. 1027 (1963) states:

- "... that Section 301 does not, even as interpreted and applied in the Sinclair case, preclude the issuance of court orders that have the same effect as injunctions. For example, either party may be combelled by court order to arbitrate a grievance and to abide by the arbitrator's award . . . The well-documented history of the evils of government injunction as well as more recent studies of the labor injunction in action, makes it clear that injunctions against strikes give the employer entirely different and infinitely more effective relief than a suit for damages or an order to arbitrate . . ." (id. at 1037)
- "... The Court itself in the Sinclair case distinguished mandatory injunctions to arbitrate and orders enforcing arbitration awards from injunctions against peaceful strikes on the ground that refusals to arbitrate or to abide by awards are not types of conduct that 'the specific prohibitions of the Norris-LaQuardia Act withdrew from the injunctive powers of the United States courts.'" (id. at 1037-1038)

And Cox in "Reflections Upon Labor Arbitration", 72 Harv. L. Rev. 1482 (1959), said:

"Our footing will be more secure if we start from the premise that a suit to compel arbitration under section 301 is an action to enforce a promise. The promise is the undertaking to arbitrate and to carry out the award. Common-law actions to enforce arbitration awards have been entertained on this theory for generations . . ." (id. at 1507)

For brevity, the Court's attention is called to the following articles.

^{8.} Givens, "The Validity of Delayed Awards Under Section 301, Taft-Hartley Act, 16 Arb. J. 161 (1961).

Davidson, Jr., "Enforcement of Collective Bargaining Agreements Under Section 301", 17 Mercer L. Rev. 442 (1966).

(C) The Failure to Enforce the Arbitrator's Award in This Case Would Be Contrary to Our National Labor Policy as Set Forth in Sections 201, 203 and 301 of the Labor Management Relations Act.

Section 201 of the Labor Management Relations Act of 1947, 61 Stat. 152, 29 U.S.C. A. 171, provides in part as follows:

"That it is the policy of the United States that-

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by . . . voluntary arbitration . . . or by such methods as may be provided for in any applicable agreement for the settlement of disputes . . . "

Section 203(d) of the Labor Management Relations Act of 1947, 61 Stat. 153, 29 U.S. C. A. 173, provides in part that:

"Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement ..."

The above sections, together with Section 301, are the Congressional declarations of national policy which have

"Section 301(a) and the Federal Common Law of Labor Agreements", 75 Yale L. J. 877 (1966).

Mintz, "Court Review of Labor Arbitration Awards", 40 Fla. L. J. 33 (1966).

Stern, "The Norris-LaGuardia Act and State Court Injunctions Against Strikes in Breach of a Collective Bargaining Agreement Under Section 301: Accommodation v. Incompatibility", 39 Temp. L. Q. 65 (1965), where Atkinson (supra) is distinguished at pp. 72-73; 79.

9. The original dispute in this case arose over the interpretation of the collective bargaining agreement. The arbitrator's award was the final adjustment agreed upon by the parties and the enforcement of that award fits squarely the national policy as enumerated in Section 203(d).

established voluntary arbitration as the "kingpin of our national labor laws". This is evident from the legislative history of those sections of the Act. Section 201 and 203 are contained in Title II of the Act and Section 301 is contained in Title III. When Senator Taft explained the purpose of these Titles, he said:

"What is the purpose of Title III? The purpose of Ttitle III is to give the employer and the employee the right to go to the Federal courts to bring a suit to enforce the terms of a collective bargaining agreement—exactly the same subject matter which is contained in Titles I and II. It is impossible to separate them . . ." (Legislative History of the Labor Management Relations Act, 1947, at 1074).

Referring again to Title III, Senator Taft said:

"I cannot conceive of any sound reason why a party to a contract should not be responsible for the fulfillment of the contract; it is outside my comprehension how anyone can take such a position." (id. at 1146).

Senator Taft also said:

"If there is one subject upon which every unprejudiced person is agreed, it is that unions must be made responsible for their acts, that collective bargaining cannot continue to be an important factor in our labor relations unless both parties are bound by their contracts . . ." (id. at 1626).

Pertinent to this case, Senator Taft said:

"Arbitration provisions are entirely legal and remain effective under our law. "As long as either party abides by the arbitration decisions, he, of course, is not subject to suit." (emphasis supplied) (id. at 1627).

The above statement clearly contemplated a suit such as is involved in this case to enforce an "arbitration deci-

sion" where the petitioner refused to "abide by" the award.

The House Conference Report No. 510, on H. R. 3020 stated that:

"The Senate amendment contained a provision which does not appear in Section 8 of existing law. This provision would have made it an unfair labor practice to violate the terms of a collective bargaining agreement or an agreement to submit a labor dispute to arbitration. The conference agreement omits this provision of the Senate amendment. Once parties have made a collective bargaining contract the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." (id. at 545).

And Senate Report No. 105 on S 1126 under the caption: "Enforcement of Contract Responsibilities", stated that:

"The committee bill makes collective bargaining contracts equally binding and enforceable on both parties." (id. at 421)

In the House debate it was pointed out that the provisions of the Act which became Section 301 contemplated "not only the ordinary lawsuits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances . . . " (Cong. Rec. House—p. 840).

Senator Thomas in explaining Title III said:

"I now come to title III, which is very brief, and merely provides for suits by and against labor organizations, and requires that labor organizations, as well as employers, shall be responsible for carrying our contracts legally entered into as the result of collective bargaining. That is all title III does. I cannot conceive of any sound reason why a party to a con-

tract should not be responsible for the fulfillment of the contract; it is outside my comprehension how anyone can take such a position." (id. at 1145-1146)

Petitioner's argument that there is no jurisdiction under Section 301 to enforce an Arbitrator's Award is contrary to all of the authorities cited above. The end result of such an argument is to destroy our national labor policy as set forth above and to cause chaos in collective bargaining. According to an article by former Justice Arthur J. Goldberg, "A Supreme Court Justice Looks at Arbitration," 2 Arb. J. 13 (1965), ninety-one percent of the collective bargaining agreements surveyed by the Bureau of National Affairs provided for arbitration of some kind and eighty-nine percent contained some variety of nostrike clauses.' If Arbitration Awards cannot be enforced. all of those collective bargaining agreements will be similarly affected as the one involved in the instant case. the petitioner is not bound by an agreed to final and binding Arbitration Award, then neither is the respondent or any other employer or union bound by any future Arbitration Award. Such a situation is not only incomprehensible but is almost unimaginable since it would make a mockery out of our entire arbitration process. Who is going to take a case to arbitration if he knows that the other party does not have to abide by the award? And what is the point of Federal Courts having the power, as conceded by petitioner. to compel parties, under Section 301, to proceed with arbitration and no power to enforce the resulting award? To borrow a phrase from petitioner such a situation would surely result in an "excursion into anarchy" (Brief p. 20).

(D) The Norris-LaGuardia Act Does Not Apply to the Enforcement of Arbitration Awards.

· Petitioner's argument that the enforcement of the Arbitrator's Award in this case violates the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. A. 104, is without any

foundation. Actually, the reverse is true since the Norris-LaGuardia Act, as well as the Taft-Hartley Act, was designed to encourage settlement of disputes by voluntary arbitration.

This Court has already ruled that the Norris-LaGuardia Act does not apply to the enforcement of arbitration agreements. In *Lincoln Mills* (supra), this Court pointed out that: "The failure to arbitrate was not a part and parcel of the abuses against which the Act was aimed", and concluded that:

"The congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of § 7 of the Norris-LaGuardia Act." (U. S. at 458-459, Ed. at 982)

In the Sinclair case (supra), relied upon by petitioner, this Court said:

"The plain fact is that § 301, as passed by Congress, presents no conflict at all with the anti-injunction provisions of the Norris-LaGuardia Act. Obedience to the congressional commands of the Norris-LaGuardia Act does not directly affect the 'congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes' at all for it it does not impair the right of an employer to obtain an order compelling arbitration of any dispute that

^{10.} In Textile Workers Union v. American Thread Co., 113 F. Supp. 137 (D. Mass. 1953), a decision by Judge Wyzanski cited with approval in Lincoln Mills, the Court said:

[&]quot;The Norris-LaGuardia Act is likewise a statute earlier than the Taft-Hartley Act. The general structure, detailed provisions, declared purposes, and legislative history of that statute show it has no application to cases where a mandatory injunction is sought to enforce a contract obligation to submit a controversy to arbitration under an agreement voluntarily made." (id. at 142)

may have been made arbitrable by the provisions of an effective collective bargaining agreement." (U. S. at 213-214, L. ed. at 452)

Furthermore, a distinction can and should be made between the type of injunction proscribed by Section Four of the Norris-LaGuardia Act which is a "prohibitory injunction", and the "mandatory injunction" which has been approved by this Court for the enforcement of arbitration agreements.

See also the dissenting opinion in Sinclair (supra) where Justice Brennan stated:

"The Court has long acted upon the premise that the Norris-LaGuardia Act does not stand in solation ... Accordingly, the Court has recognized that Norris-LaGuardia does not invariably bar injunctive relief when necessary to achieve an important objective of some other statute in the pattern of labor laws ... Insistence upon strict application of Norris-LaGuardia to a strike over a dispute which both parties are bound by contract to arbitrate threatens a leading policy of our labor relations law ... Arbitration is so highly regarded as a proved technique for industrial peace that even the Norris-LaGuardia Act fosters its use." (U. S. at 217, L. ed. at 454).

Mendelsohn in his article, "Enforceability of Arbitration Agreements under Taft-Hartley Section 301", 66 Yale L. J. 167 (1956) which was cited with approval in *Lincoln Mills* (supra), pointed out that:

"And section 8 of the Norris-LaGuardia Act specifically encourages arbitration by requiring that no relief may be granted until 'every reasonable effort to settle such dispute either by negotiation . . . or voluntary arbitration' has been made . . . It should be remembered that both the Norris-LaGuardia Act and the Arbitration Act were drafted and enacted when the economic conditions and the development of

legal institutions were nowhere near their present status. The Norris-LaGuardia Act was intended to discourage labor injunctions as the term was then understood. Whether it was also intended to interfere with the contractual obligations freely and voluntarily agreed upon by the parties is another question . . . Thus, the histories behind the acts and their purposes at the time of enactment are clearly inapposite to the economic and industrial development of the present era. Either they should be amended by Congress, or the Court should interpret them in light of current conditions. To interpret them according to the purposes of a past generation is to retard if not resist the necessary and natural growth of our legal system . . . Labor organization has now reached a stage of development where it should be as bound by its contractual obligations as is any ordinary individual. If in return for collective benefits the union agrees not to strike, it should be held to both the benefits and the burdens of the contract. If the parties agree to arbitrate, the agreement should be enforceable-and effectively-regardless upon whom the onus may fall." (id. at 181-183)

Cox in "Current Problems in the Law of Grievance Arbitration, 30 Rocky Mt. L. Rev. 247 (1958), said:

"The Norris-LaGuardia Act was enacted before collective bargaining agreements had become the cornerstone of sound industrial relations, and most of the proponents of its philosophy also held that a collective bargaining agreement should carry only moral and economic sanctions. Congress rejected their approach in Section 301 by providing for suits for violation of the agreement . . ." (id. at 255)

Givens in "Section 301, Arbitration and the No-Strike Clause" (supra) said:

"... enforcement of arbitration may be a sufficiently specific federal policy under Section 301 to justify injunctive relief in spite of the Norris-LaGuardia Act... The answer is that there are several highly significant differences between arbitration and direct judicial intervention: The original authority of an arbitrator derives from the consent of the parties, not governmental compulsion, and therefore his authority is not subject to the potential abuses against which the Norris-LaGuardia Act was aimed . . ." (id. at 1013-1014)

Givens in "Injunctive Enforcement of Arbitration Awards", 17 Lab. L. J. 292 (1966) also pointed out that:

"It is now clear that awards themselves as well as agreements to arbitrate are enforceable under Section 301... Where the order sought to be judicially enforced is one made by a tribunal created by agreement of the parties sought to be bound, the reasons for the Norris-LaGuardia Act's ban on injunctive relief would not appear to apply ... Further, an order enforcing an award of an arbitrator need not in terms be an order directly enjoining the strike, and thus may not fall within the literal language of Norris-LaGuardia." (id. at 293-294)

And Loeb in "Accommodations of the Norris-LaGuardia Act to Other Federal Statutes", 11 Lab. L. J. 473 (1960), said:

"Furthermore, it is arguable from Section 8 that arbitration is to be encouraged in labor-management relations—a further indication that the Norris-La-Guardia Act should not be applied to deny enforcement of an arbitrative agreement (id. at 488)

"While it seems fairly certain that the 1932 Congress did not have in mind the possibility of a suit for an injunction based on a contract, yet the fact

remains that the language of Section 4(a) of the Norris-LaGuardia Act, which clearly proscribes enjoining a peaceful strike, does not distinguish between actions founded on tort and contract. Nevertheless, it seems that to the extent that the current labor policy of the federal government includes placing the force of law behind labor-management agreements, this proscription has become anachronistic; and the courts would therefore be justified in relaxing the anti-injunction policy in order to enforce that to which the parties themselves have agreed. The anti-injunction proscription seems particularly unsuited to a case in which a union has struck rather than comply with a compulsory arbitration agreement. . . ." 11 (id. at 489)

II. The Action Below Was Not Moot.

Petitioner argues that respondent's complaint "was based on an alleged work stoppage on July 29, 1965", and since the longshoremen later returned to work the matter became moot. (No such work stoppage is actually averred in the complaint.) This statement demonstrates petitioner's misconstruction of the action below. For respondent's complaint was not based upon any work stoppage. It was based upon "the stated and confirmed intent of the union to disregard the Arbitrator's Award" (R. 6). The complaint did not pray that any work stoppage be enjoined. Rather it prayed "that the Court set an immediate hearing and enter an order enforcing the Arbitrator's Award" (R. 6).

The suit in this case did not become most because the men had gone back to work at the time of the first hearing on August 3, 1965. This suit involved the enforcement of

^{11.} See also: Lesnick, "State-Court Injunctions and the Federal Common Law of Labor Contracts: Beyond Norris-LaGuardia", 79 Harv. L. Rev. 758-759 (1966) and Wellington & Albert, "Statutory Interpretation and the Political Process: A Comment on Sinclair v. Atkinson", 72 Yale L. J. 1551-1553, 1555, 1557-1558 (1963).

an Arbitrator's Award which interpreted a provision of a collective bargaining agreement between the parties which extends to September 30, 1968.¹² The men returned to work, as was pointed out to the District Court, simply because the operators of the vessel under "economic duress" (R. 40), could not afford to keep the vessel idle any longer awaiting legal redress to the Union's flagrant violation of the Arbitrator's Award (R. 40; 43-44). The Court was advised and recognized that this was not a "legal solution" to the problem and it was for this reason that the Court decided to hear respondent's testimony.¹³ The Court continued the case without a decision after receiving the assurances of counsel for the Union that the Union was bound by the Arbitrator's Award and intended to abide by it.¹⁴

However, these assurances were broken within a short period of time and the wisdom of the learned trial judge in keeping this case open and retaining jurisdiction should be commended. For industrial peace on the waterfront requires a prompt legal resolution of disputes.¹⁵

^{12.} There is a distinct difference between an arbitration involving a specific incident or a specific individual and an arbitration involving the interpretation of a contract clause such as was involved in this case. It was agreed that the arbitrator's interpretation would be final and binding for the balance of the contract whenever the setback clause was invoked. (See Plaintiff Exhibit No. 1 and R. 115.) The Arbitrator's Award does not limit his interpretation to specific incidents, work stoppages, or to particular vessels. Rather it is a general and binding interpretation of the set-back clause for the remainder of the contract.

^{13.} Indeed, the fact that respondent wanted to and did present its testimony at the first hearing, after the men returned to work, demonstrates that respondent's case was not based on any work stoppage and was not moot.

^{14.} See footnote 3 supra.

^{15.} The Court of Appeals also commended the trial judge in this regard:

[&]quot;The Court continued the case for the time being against the possibility of a like practical condition arising. The wisdom of so doing developed when an identical type of work dis-

Actually what petitioner is seeking to accomplish is the avoidance of an unfavorable ruling against it by insisting that this issue should be "re-arbitrated" (R. 100).16 As was pointed out in the Court below, this would make a "mockery" out of the whole arbitration process (R. 109-110). The sole purpose of arbitration is to settle industrial disputes and neither side has a right to say that it will not be bound by or abide by an Arbitrator's Award because it does not like it. If the Union could take that position in this case, the employer could take the same position with respect to other awards which were adverse and this would lead to chaos on the waterfront or in any other industry (R. 110). Fortunately, the law is well settled that where the parties are the same and the issue is the same an Award of an Arbitrator acts like a judgment of a Court and the doctrine of res judicata and collateral estoppel apply. See Todd Shipyards Corp. v. Industrial U. of Marine & Ship Whrs., 242 F. Supp. 606 (D. N. J. 1965).

The case cited by petitioner in support of its argument that this case was moot and that the Court should not have retained jurisdiction is not even remotely pertinent to this case. In Amalgamated Association v. Wisconsin Emp. Rel. Bd., 340 U. S. 416, 71 S. Ct. 373, 95 L. ed. 389 (1951), the Arbitration Award had expired and was superseded by

turbance and of more serious proportions broke out on September 13th, was immediately brought before the Court and promptly concluded. The issue was the very same continuing quarrel regarding the governing labor agreement which directly affected the entire Port of Philadelphia." (R. 125-126)

affected the entire Port of Philadelphia." (R. 125-126)

16. Petitioner's footnote 4 (Brief pp. 4-5) regarding the alleged re-arbitration of disputes is erroneous. The parties never rearbitrated an award involving an interpretation of a contract clause similar to this dispute. The award referred to (No. 78, R. 118-119) did not involve the same problem of interpretation. It involved five separate disputes regarding the number of men required for various operations and cargoes. But instead of reversing himself in the prior decisions, as petitioner contends, the Arbitrator specifically ruled that he affirmed those decisions.

agreement of the parties. This is a far cry from the instant case where the Award covered an interpretation of a contract which does not expire for another year.

III. The Court Below Did Not Violate Federal Rules of Civil Procedure 52(a) and 65(d) in Entering the Order Enforcing the Arbitrator's Award.

Petitioner asserts that the Trial Court violated Federal Rule of Civil Procedure 52(a) because it failed to make findings of fact and conclusions of law and that the order appealed from violated Rule 65(d) because it allegedly failed to set forth the reasons for its issuance and "the act or acts sought to be restrained."

Rule 52(a) by its terms does not apply to decisions on "motions.". This action was on a motion for an order against the petitioner to show cause why it had not complied with the Arbitrator's Award (R. 31), Hence by its terms Rule 52(a) did not apply to this decision.

Secondly, it should be noted that the petitioner took this appeal the day following the entry of the order of the Court below and by its action precluded the Court below from drafting findings of fact and conclusions of law if such were required. Finally, petitioner refused to introduce any evidence at the hearings below to contradict the respondent's testimony although at each hearing the Court gave petitioner ample opportunity to present such testimony. (R. 46; 73-74; 101). At the conclusion of respondent's testimony on September 15, 1965, counsel for petitioner said: "I don't intend to offer anything, your Honor . . . " (R. 102). Consequently, there was no issue of fact before the District Court. The facts as set forth in respondent's complaint and testimony were admitted and uncontradicted. Those facts clearly showed that the petitioner had brazenly refused to abide by the Arbitrator's Award. Under these circumstances, findings of fact and conclusions of law were not required. See Barron and Holtzoff (Wright Revision),

Vol. 2b Section 1126, at 500, where it is stated in discussing Rule 52(a) that:

"Findings of fact are unnecessary if factual issues are not present or if the record clearly discloses without necessity of findings the basis on which the injunction was granted or denied."

In Douds v. Local 1250, 170 F. 2d 695 (2d Cir. 1948), it was held that the absence of findings of fact required by Rule 52(a) was only a non-jurisdictional defect where the injunction order was attacked only on constitutional grounds.

See also Judge Yankwich's comments in 8 F. R. D. 271, Findings in the Light of the Recent Amendments to the Federal Rules of Civil Procedure wherein he stated that:

"It has been the law of pleading that where the facts are undisputed or are agreed or stipulated to, no findings are necessary. Necessarily so. Because in such cases, the Court merely determines the law arising from the uncontradicted facts." (id. at 281)

See also to the same affect United States v. Prendergast, 241 F. 2d 687 (4th Cir. 1957); Rossiter v. Vogel, 148 F. 2d 292 (2d Cir. 1945) and Hurwitz v. Hurwitz, 136 F. 2d 796 (D. C. Cir. 1954).

Petitioner also contends that the order of the Court below did not comply with Federal Rule of Civil Procedure 65(d) because it allegedly failed to set forth the reasons for its issuance and the act or acts sought to be restrained.

Rule 65(d) by its terms applies only to an "injunction or restraining order". The order appealed from was not an injunction or restraining order as contemplated by Rule 65(d) but rather was an order for specific performance of the Arbitrator's Award. In addition, under Rule 65(e) there is a serious question as to whether Rule 65(d) applies to orders involving labor disputes between an employer and an employee. See Barron and Holtzoff (Wright Revi-

sion), Vol. 3, Section 1438 at 503. Furthermore, even if the order appealed from should be considered as a "mandatory injunction" as referred to in some of the cases cited above, there was compliance with Rule 65(d).

The order clearly and concisely explained the reason for its issuance, was specific in its terms and described in reasonable detail the act it covered by providing that the Award of the Arbitrator should "be specifically enforced" by the Union and that the petitioner should "comply with and abide by the said Award." As the District Judge pointed out anyone who does not understand what was meant by the Court's order does not understand the English language (R. 112). This is particularly applicable to the able counsel for petitioner who participated in the hearings before the Arbitrator which resulted in the Arbitrator's Award and the three hearings before the Court below where the evidence was uncontradicted that defendant Union had violated the Award and stated that it did not intend to "abide by" and "comply with" the said Award.

CONCLUSION.

The decisions of this Court which have interpreted Section 301 of the Labor Management Relations Act make it crystal clear that there is jurisdiction under that section to enforce a final and binding Arbitration Award by an action for specific performance. The Norris-LaGuardia Act has no application whatsoever to the enforcement of an Arbitrator's Award. In fact, the failure to enforce an award under a voluntary arbitration agreement would completely destroy our national labor policy which encourages the settling of labor disputes by the arbitration process. Therefore, the decision of the Court below should be affirmed.

Respectfully submitted,

Francis A. Scanlan, Kelley, Deasey & Scanlan, Counsel for Respondent.

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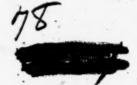
IN THE .

JOHN F. DAVI., T. LAK

Supreme Court of the United States

October Term, 1966.





INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, ITS OFFICERS AND MEMBERS, Petitioners.

v

PHILADELPHIA MARINE TRADE ASSOCIATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

ABRAHAM E. FREEDMAN,
MARTIN J. VIGDERMAN,
FREEDMAN, BOROWSKY AND LORRY,
8th Floor, Lafayette Building,
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Supreme Court of the United States

October Term, 1966.

No.

INTERNATIONAL LONGSHOREMEN'S ASSOCIA-TION, LOCAL 1291, ITS OFFICERS AND MEMBERS, Petitioners,

v.

PHILADELPHIA MARINE TRADE ASSOCIATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners, Local 1291, International Longshoremen's Association, its officers and members, respectfully pray that a Writ of Certiorari issue for review of the final judgment of the United States Court of Appeals for the Third Circuit, entered in the above-entitled matter on November 17, 1966. Said judgment affirms an Order of the District Court for the Eastern District of Pennsylvania holding petitioners in contempt for non-compliance with a prior Order of the

District Court, which is now pending for review on Certiorari before this Court: International Longshoremen's Association, Local 1291, Petitioner vs. Philadelphia Marine Trade Association, October Term, 1966, No. 892; certiorari granted, February 13, 1967.

OPINION AND ORDERS OF THE COURTS BELOW.

The Order of the District Court for the Eastern District of Pennsylvania (226a-27a), unreported, is printed as Appendix B hereto (p. 23). The opinion of the Court of Appeals for the Third Circuit, reported at 368 F 2d 932, is printed as Appendix C hereto (p. 25). The judgment of the said Court of Appeals is printed as Appendix D hereto (p. 29). The Order of the Court of Appeals denying rehearing is printed as Appendix E hereto (p. 30).

JURISDICTION.

The judgment of the Court of Appeals was entered on November 17, 1966 (p. 29). The order denying rehearing was entered on January 6, 1967 (p. 30). The jurisdiction of this Court is invoked under 28 U.S.C., section 1254(1).

QUESTIONS PRESENTED.

Where the Trial Court entered an Order without findings "enforcing" an arbitrator's award involving a labor dispute, and refused to state whether the order enjoined any strike or work stoppage, and thereafter a "wildcat" strike occurred whereupon the Court held a contempt hearing upon an ex partè "report" of the employer without requiring the employer to file a complaint specifying the alleged contempt, and thereafter, despite a finding that the union was not responsible for the strike and was doing all possible to terminate the strike, nevertheless, held the union in contempt for the "mass action" of its members; did not the District Court commit fundamental error in:

- (a) holding a hearing upon an ex parte report without requiring the filing of a written complaint as required by the F.R.C.P.;
 - (b) refusing a jury trial under the Act of 1948;
- (c) holding the union in contempt because of the "mass action" of certain of its members who engaged in a "wildcat strike";
- (d) holding the union in contempt despite the lack of jurisdiction in the Court to entertain the proceedings?

STATUTES AND RULES INVOLVED.

The statutory provisions and rules involved are: Norris-La Guardia Act, 29 U.S.C.A. 104, Act of June 25, 1948, c. 645, 18 U.S.C.A. 3692; Federal Rules of Civil Procedure 3, 4, 8, 38 (a), 65 (d).

STATEMENT OF THE CASE.

This Court has already granted certiorari in this case of an Order of the Court below which enjoined a work stoppage. The instant phase of the case involves a contempt order of the Court below which fined the union \$100,000.00 per day because of a "wildcat" strike alleged to be in violation of that Order of the lower Court, which this Court has now taken for review.

This case stems from an arbitration decision concerning a labor dispute which occurred on April 26, 1965.² Thereafter, another dispute arose on July 30, 1965, and the union sought arbitration, but the employer refused, contending that the earlier decision applied and they obtained an Order from the Court below "enforcing" the arbitrator's award.³ Another dispute arose on February 24, 1966, with another employer, which precipitated a "wildcat" strike. The union attempted to prevent the strike and after it was started, tried to terminate it.⁴ The union asked for arbitration, whereupon the employers, because of that request, "reported" orally, ex parte, to the District Judge

^{1.} ILA v. PMTA, Oct. Term No. 892—Certiorari was granted February 13, 1967. The case is expected to be argued during the Fall Term of 1967.

^{2.} A fuller presentation of the underlying factual picture is set forth in the Petition for Certiorari already granted.

^{3.} The arbitrator's decision simply interpreted a clause of the agreement. It did not direct any return to work or relate to a work stoppage. The lower Court's Order simply provided that "the arbitrator's award will be enforced". Union counsel requested clarification as to whether the Order enjoined a strike or work stoppage, but the Court arbitrarily refused to reply or to make findings as required by the Rules.

^{4.} The employer admitted that the union efforts were "sincere" (81a) and the employer's counsel admitted that the union was doing all in its power to terminate the work stoppage. (7a, 223a-224a). The Court found as it had to, that the strike was a "wildcat," but fined the union on the ground it was liable for the "mass action" of the members.

demanding that the union be held in contempt. No pleading or other document was filed, but the Court, nevertheless, scheduled a contempt hearing for March 1, 1966.

At the outset of the hearing the union moved that the employers be required to file a pleading setting forth in what manner the union was supposed to have violated the Court's Order so that the union could file an Answer and prepare a defense. (20a-22a). The Court summarily denied this Motion (20a). The union then moved for a dismissal on the ground that the entire proceeding was in violation of Section 4 of the Norris-LaGuardia Act and of the Supreme Court's decision in Sinclair Refining Co, v. Atkinson, 370 U.S. 195, but the Court peremptorily denied this Motion also (21a) and directed the parties to proceed with the testimony. The union then filed a written application for a jury trial under the Act of 1948 but the Court summarily denied this Motion also.

The employers conceded as the testimony proved that the union made every sincere effort to prevent and terminate the work stoppage (81a, 223a-224a). The employers contended, however, that the union's demand for arbitration alone was a violation of the District Court's Order. The District Judge rendered an oral decision from the bench holding the union and its officers guilty of contempt on the ground that the union was responsible for the "mass action" of its members.

The union filed its Petition for Certiorari from the injunction Order of September 15, 1965 and this Court granted that Petition on the 13th day of February, 1967. The instant Petition relates to the subsequent contempt Order flowing from the foregoing injunctive Order.

REASONS FOR GRANTING THE WRIT.

I. Proceeding With a Contempt Hearing Upon the Oral "Report" of a Party Without Requiring a Complaint Violated F.R.C.P. 3; Failure to Serve Such a Written Complaint Upon Defendant Violated F.R.C.P. 4; Failure to Advise Defendant by Written Complaint of What He Was Required to Defend Against Violated F.R.C.P. 8; and the Failure to Clarify and Make Findings With Respect to the Injunctive Order Alleged to be Breached, Violated F.R.C.P. 52(a) and 65(d). Such Action by the District Judge is a Prejudicially Substantial Departure from Proper Judicial Procedure, Calling for the Exercise of This Court's Power of Supervision: Rule 19.

The procedures followed by the plaintiff in the District Court in this contempt proceeding have flagrantly flouted every concept of due process of law and required legal procedure. The only papers on file herein are the Rule to Show Cause, Petitioners' Demand for Jury Trial, and the transcript of testimony. There is no complaint or other pleading as required to commence the action (F.R.C.P. 3) to notify the defendant thereof (F.R.C.P. 4), or to advise defendant of what he has to defend against (F.R.C.P. 8).

With respect to the injunction order alleged to have been breached, the failure to make findings of fact and conclusions of law has already been noted in our petition for certiorari which was granted by this Court. What was stated there applies with equal force to this Petition, because no contempt order should be entered unless the order alleged to be violated is sufficiently clear as to leave no doubt in the mind of the alleged violator of the activities which are enjoined.

The District Judge, having ignored Rules 52(a) and 65(d) requiring findings, and refusing to clarify the injunctive order so that defendants were completely in the

dark, continued with this basically erroneous procedure by ignoring every one of the remaining basic rules, and requiring petitioners to enter into a case without knowledge of the claim or charge, without affording petitioners any opportunity whatsoever for preparation; and in otherwise violating the due process requirements. Moore's Federal Practice, Volume 2, p. 1783. In Philippe v. Window Glass Cutters League, 99 F. Supp. 369, involving a civil contempt, the court held that there should be a pleading directed to the Court which sets forth the acts or conduct allegedly constituting the contempt, that there should be reasonable notice to the one charged with the contempt and a specification of the acts or conduct allegedly constituting the contempt. Said the court?

"In other words, the basic requirements of due process, notice and hearing, should be followed. The original pleading or 'accusation' should conform to the standards set by Rule 8, Federal Rules of Civil Procedure, 28 U.S.C.A., for the statement of a claim, wherein it is provided that a pleading 'shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled."

The actions of the District Judge totally ignored all of these requirements of due process, thereby setting up a trap which defendants could not escape. Yet, the Court of Appeals incredibly failed to consider or discuss this glaring failure of process and procedure. Thus, the Court below sustained a contempt order in the face of a record which established conclusively that the petitioners could not determine what acts they were allegedly prohibited from performing. This failure to follow the Rules of Civil Pro-

cedure most seriously violated petitioners' rights, indeed to the point where the union will be completely put out of business and destroyed by the order of the Court below.

More important, this departure from and indifference to the rules of procedure would undermine the due process requirements generally, and would tend to establish a rule based on the discretion and whim of individual judges without the protection of the due process requirements and the established rules of laws.

II. In Holding That the Union is Liable for "Mass Action" of Its Members Who Engaged in a "Wildcat" Strike, Despite the Fact That the Union Admittedly Exerted Every Reasonable Effort to Prevent and to Terminate the Work Stoppage, the Court of Appeals Below Came Into Direct Conflict With the Holding of the Court of Appeals for the District of Columbia in U.S. v. United Mine Workers, 177 F. 2d 29 (1949).

Although the District Judge held the petitioners in contempt only because the wildcat strike was a "mass action" which the union's repeated efforts could not prevent and terminate, and petitioners strongly contested this legal conclusion, urging that the Court of Appeals follow the decision of the District of Columbia Circuit, the Court of Appeals neither discussed, considered, nor passed upon this point. A Petition for Rehearing, pointing this out to the Court, was likewise unsuccessful in obtaining judicial consideration of this most significant issue.

At the trial, the respondents admitted that the union did not cause the wildcat strike, but did everything possible to avoid it and terminate it after it started. The District Judge made the specific finding that the individual members themselves stopped work in a "wildcat" action and that the union leaders urged them to return to work (226a-227a). He made it clear that the contempt order was not predicated upon the improper actions or inaction of the union

officers, but upon the lack of success in their efforts—that "they did not return to work" (227a). The union and its officers were held in contempt because the Court concluded that the union is automatically responsible for the "mass action of its members", despite the union's efforts against it.

The District Judge's "mass action" conclusion was a misapplication of a principle stated by the District of Columbia court in *United Mine Workers v. U.S.* 177 F 2d 29 (1949). In that case, the District Court had held a union in contempt as responsible for "the mass action of its members". There was no evidence of any effort by union officials to prevent or terminate the strike. On appeal, the Court of Appeals affirmed, but made it very clear that such affirmance was because the union had sent no word to its striking members to return to work within the period involved (35). The Court said (at 36):

"It seems plain enough that if Lewis had sent on April 5th telegrams of a directory or advisory nature ... neither he nor the Union would have been guilty of contempt of the court's order...."

"... we repeat that the Union was not convicted for causing the walk-out. It was convicted because it did not exercise, or attempt to exercise, whatever powers it had to cause its members to resume work. ... Quite apart from what the miners did, the Union made no attempt to direct, instruct, or persuade them to return to work, and thereby it disobeyed the court's order."

Thus, the Court made certain that the "mass action" rule emanating from that District was impressed with a specific exceptive proviso where the union attempts to have the men return to work—just as occurred in the instant case. Thus, subsequently, when the same parties were again before the

^{5. 77} F. Supp. 563, 567 (D. C., 1948).

District Court in a contempt proceeding, the same Court that announced the "mass action" rule pointed out that in view of the Court of Appeals' statement, where the record fails to demonstrate "either beyond a reasonable doubt or by clear and convincing evidence—that there has been wilful contempt of this court's order on the part of the Union", contempt does not lie (181); that

"The record in this case is different from that in the 1948 contempt proceeding against the same respondent. There it was shown that the Union had 'made no attempt to restore normal production.'..."

"Following the court's order in the instant case, various telegrams, letters, and other communications were sent by the Union to its district and local branches and members, instructing the miners to return forthwith to work.

"This court does not hold that any telegram or combination of telegrams or letters would constitute a good faith compliance with an order directing action on the part of the Union. It does hold that, where the Union has sent communications such as are included in this record, the apparent good faith of such communications must be controverted not by mere suspicion based on failure to obtain results, but by clear and convincing evidence, if they are to be ruled by a court of law to constitute only a token compliance." (89 F. Supp. at 181) (Emphasis supplied).

As to the weight to be accorded to the evidence, the court made this significant holding:

"It may be that the mass strike of Union members has been ordered, encouraged, recommended, instructed, induced, or in some wise permitted by means not, appearing in the record; but this court may not convict on conjecture, being bound to act only on the

^{6.} U.S. vs. United Mine Workers, 89 F. Supp. 179 (D.C., 1950).

evidence before it, which is insufficient to support a finding of either criminal or civil contempt.

"I therefore, find the respondent Union not guilty of civil or criminal contempt." (89 F. Supp. at 181)

Thus, it is obvious that the District Judge grossly misunderstood the "mass action" decision. The decision below has applied a legal principle without giving effect to its essential proviso, thereby erroneously convicting petitioners of contempt. The Court of Appeals failed to take cognizance of the rule, altogether. The issue is an important one and of an overwhelmingly recurrent nature, so long as free men will be permitted to give personal expression to their complaints and desires. If the broad swath cut by the affirmance below is permitted to stand, free individual expression will be a penalty that organized labor will never survive. The decisions of the Third and District of Columbia Circuits stand opposed upon this important point. This conflict must be resolved by this Court upon review of this case together with the parent injunction proceeding in which this Court has already granted certiorari.

III. If the Basic Injunction Action Is Dismissed for Lack of Jurisdiction, The Order of Contempt and the Fine Must Necessarily Fall: U.S. vs. United Mine Workers of America, 330 U.S. 258.

If this Court should reverse the order in No. 892, the injunction aspect of the instant case, the order of contempt herein would also have to be reversed. In *United States v. United Mine Workers of America*, 330 U.S. 258, 91 L. Ed. 884, this Court stated on this very point:

"The right to remedial relief falls with an injunction which events prove was erroneously issued, Worden v. Searls, supra (121 US at 25, 26, 30 L. ed. 857, 858, 7S. Ct. 814); Salvage Process Corp. v. Acme Tank Cleaning Process Corp., (CCA 2d.) 86F. 2nd. 727

(1936); S. Anargyros, Inc. v. Anargyros & Co., (CC) 191 F. 208 (1911); and a fortiori when the injunction or restraining order was beyond the jurisdiction of the court. Nor does the reason underlying United States v. Shipp, 203 US 563, 51 L. ed. 319, 27 S. Ct. 165, & Ann. Cas. 265, supra, compel a different result. If the Norris-LaGuardia Act were applicable in this case, the conviction for civil contempt would be reversed in its entirety." (U.S. at 295, L. Ed. at 913)

Therefore, the present contempt proceeding is abated by a termination of the injunction proceeding out of which it arose.

^{7.} In the Court below, respondent contended that the contempt order falls with the injunction only where a compensatory fine is ordered paid to plaintiff; and not where the order was to coerce defendant into compliance. This is clearly not the law. This Court has divided contempt orders into only two categories: civil, to remedy and criminal, to punish. The remedy can be to compensate the plaintiff or to coerce the defendant. Thus, in Harris v. Texas and Pacific R.R. Co., 196 F. 2nd. 88, 89-90 (7 Cir., 1952) where in civil contempt, the defendant had been imprisoned, and no fine or compensation had been ordered, the Court said that, in accordance with the United Mine Workers case (quoting the First Circuit in Parker v. U.S., 153 F. 2d 66, 71) (90): "Since the complainant in the main cause is the real party in interest with respect to a compensatory fine or other remedial order in a civil contempt proceeding, if for any reason complainant becomes disentitled to the further benefit of such order, the civil contempt proceeding must be terminated.' . . ." (90) (Emphasis supplied) The same situation exists in the instant contempt case, where the fine was also not compensatory, but coercive, and was, thus remedial.

IV. The Lower Court's Refusal to Grant a Jury Trial Violated the Act of 1948 And Was a Deprivation of Due Process and in Conflict with the Strict Policy Declared by This Court in Beacon Theatres v. Westover, 359 U.S. 500.

This Court has made it crystal clear and beyond doubt that the right to trial by jury is basic in our jurisprudence and that any deprivation thereof must be most closely scrutinized. Thus, in Beacon Theatres v. Hon, Harry C. Westover, District Judge, 359 U.S. 500, 3 L. Ed. 2d 988 (1959), a mandamus proceeding upon refusal to grant jury trial, Mr. Justice Black most emphatically declared:

- "Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." (U.S. at 501, L. Ed. at 992)
- "... In the Federal courts this (jury) right cannot be dispensed with, except by the assent of the parties entitled to it ..." (U.S. at 510, L. Ed. at 997)

The basic right to a jury trial is stated in the Constitution, Amendment Seven. Federal Rule of Civil Procedure 38(a) provides:

"The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate."

More specifically, Congress has enacted a special legislation to be applicable in all contempt actions growing out of labor disputes. The Act of Congress of June 25, 1948, c. 645, 62 Stat. 844, 18 U.S.C.A. 3692 provides: "\\$3692. Jury trial for contempt in labor dispute cases
"In all cases of contempt arising under the law of the
United States governing the issuance of injunctions or
restraining orders in any case involving or growing out
of a labor dispute, the accused shall enjoy the right to
a speedy and public trial by an impartial jury of the
State and district wherein the contempt shall have
been committed." (Emphasis supplied).

This clear and unequivocal language repels any distinctions which would cut the heart out of the letter and spirit of the Act. It covers all cases of contempt without regard to the nature of the contempt, so long as a labor dispute is involved.

At the outset of the contempt proceeding before the District Court on March 1, 1966, petitioners' counsel filed a written demand for jury trial, citing said statute. This was denied by the Court. The Court of Appeals held that the jury trial statute of 1948 is inapplicable because it applies only to injunctions in labor disputes, and that "the order under review is not an injunction . . . but an order . . . for specific performance of the bargaining agreement which made the award final and binding . . . Nor does it involve or grow out of a labor dispute". The Court rationalized that although there was a labor dispute between employer and union, nevertheless "it had been settled by the arbitrator's award . . . and was no longer alive"; that the order arose from the union's failure to comply with the Court's order. This is indeed an amazing conclusion in view of the record which establishes, beyond the shadow of a doubt, that the controversy was still raging and had resulted in a wildcat strike by members of the union, a strike which originated in a specific labor dispute which did not even have its factual beginnings until long after the arbitration award. It is hardly less than incredible that the Court could reach such a conclusion in the face of the evidence in this case. Moreover, in every case of contempt "in any

case involving or growing out of a labor dispute", the labor dispute necessarily becomes one step removed by the intervention of a basic order of injunction, or, as the Court terms it, of specific performance. In either situation, the case still involves or grows out of "a labor dispute". It is this same reasoning concerning the same injunctive order that is to be reviewed by this Court in the parent case, No. 892.

The Court of Appeals has also attempted to circumvent the clear language of the Act by applying "natural inference" to deprive petitioner of jury trial. It holds that the 1948 statute took the subject matter of Section 3692 out of the Norris-LaGuardia Act and made it a part of the criminal code and that the "natural inference" is that this section is applicable only in criminal proceedings, and that the instant proceeding is civil. This "inference" ignores the clear, mandatory language of the Section, which specifically directs a jury trial in "all cases of contempt . . . in any case involving or growing out of a labor dispute . . . " (emphasis supplied). We must assume that "the legislative purpose is expressed by the ordinary meaning of the words used" Richards v. U.S., 369 U.S. 1, 9, 7 L. Ed. 2d 492, 498 (1962). The intent that the section shall apply to all cases of contempt in labor dispute injunctions could not be more clearly or succinctly expressed.

^{8.} This play on semantics and the reasoning of the court below was forthrightly rejected by the New York District Court in Marine Transport Lines v. Curran, 55 L C 11748 (2-27-67), as follows:

[&]quot;This is a labor dispute. Petitioner does not claim otherwise. The court is being asked to enjoin a work stoppage. This is the reality of the situation, whatever may be the form of the proceeding. To the extent that Philadelphia Marine Trade Ass'n v. International Longshoremen's Ass'n. (54 LC ¶ 11,393) 365 F. 2d 295 (3rd Cir. 1966), cert. granted, 35 U.S.L. Week 3277 (1967), is to the contrary, I decline to follow that decision."

^{9.} To use the language of Chief Justice Warren in the Richards case (U.S. at 9, L. Ed. at 498): "We believe that it would be difficult to conceive of any more precise language Congress could have used to command application" of this section to all labor dispute contempt cases, civil or criminal "than the words it did employ" in this Section.

In face of such a clear mandate, only if a specific exception to this provision is statutorily declared, can a labor contempt case be insulated from this protection. Constitution of U. S., Amendment Seven; F.R.C.P. 38(a).

Further, the inclusion of Section 3692 in Title 18, U.S.C., does not limit its effect to cases of criminal contempt only. This section is a re-enactment of Section 11 of the Norris-LaGuardia Act. 29 U.S.C.A. 111. The only change is that while the original provision was limited to all cases arising "under this Act" (Norris-LaGuardia), the re-enactment is applied to all cases "of contempt arising under the laws of the United States governing . . . injunctions . . . in any case involving or growing out of a labor dispute." Therefore, Congress must be held to have intended that the language of the new section should derive its meaning from definitions supplied or reached under the Norris-LaGuardia Act, which was not limited to criminal contempt, but applied as well to civil. This Court has already made it clear that the general purpose of the 1948 revision of the Criminal Code was to codify and revise. while preserving the original intent. U.S. v. Cook, 384 U.S. 257., 16 L. Ed. 2d 516 (1966). A change in intent or application can be assumed only if there is a specific change of substantive language or some other "specific indication that Congress had receded from the intention it clearly expressed?'. Above all, the words must be given "their fair meaning in accord with the evident intent of Congress . . . as evidenced by common usage ... " Id.10

^{10.} The same principle has been applied to the 1948 revision of the Judicial Code, 28 U.S.C.A. In Fourco Glass Co. v. Transmirra Prod. Corp., 353 U.S. 222, 228, 1 L. Ed. 2d 786, 790 (1957), this Court said: "For it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect unless such intention is clearly expressed." The "natural inference" drawn by the Court below, in the instant case, clearly conflicts with this rule. The only change clearly expressed was to apply the jury right to "all" contempt proceedings growing out of labor disputes.

Thus, whether civil or criminal, since the case was for contempt growing out of a labor dispute, a jury was mandatory. Since petitioners were deprived of their essential right to trial by jury, the contempt hearing below was a nullity, and the contempt order and fine were void.

CONCLUSION.

The present, contempt aspect of this case presents issues which are of great significance, and are of a recurring nature. The labor injunction has become an every-day event, and the problems of compliance therewith rapidly follow. This case presents the problem in all of its aspects, both substantive and procedural. The Court below has failed to consider certain of the important issues, and has disposed of others in direct conflict with the pronouncements of this Ceurt and in erroneous disagreement with other circuits. Unless reviewed by this Court, substantial misconception and confusion will persist and multiply.

Further, the instant proceeding is intrinsically bound up with the injunction aspect which this Court has already accepted for review. As petitioners pointed out to the Court below by petition for consolidation (which was refused) consideration of the contempt proceeding and order is essential to an understanding of the real intent and effect of the original injunction, which the District Judge refused even to explain. The contempt part of the case demonstrated that what had been termed an order "for specific performance of an arbitration award" was actually an injunction against work stoppage. This clearly appeared when the employers asked for a contempt order only when the men refused to return to work, and when the fine levied was \$100,000.00 for each day that the men refused to work. and was ordered retroactively as punishment for refusing to return to work. This is what makes the action of the Court of Appeals so shocking.

If allowed to stand, the decision below, wholly erroneous and confusing, will condemn petitioner union to destruction. Certiorari should be granted and the case consolidated with No. 892.

Respectfully submitted,

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APPENDIX A.

Norris-LaGuardia Act, 29 USCA.

§ 104. Enumeration of specific acts not subject to restraining orders or injunctions.

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

- (a) Ceasing or refusing to perform any work or to remain in any relation of employment;
- (b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;
- (c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;
- (d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;
- (e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

- (f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;
- (g) Advising or notifying any person of an intention to do any of the acts heretofore specified;
- (h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and
- (i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. Mar. 23, 1932, c. 90, § 4, 47 Stat. 70 (Norris-LaGuardia Act).

18 U.S.O.A.

§ 3692. Jury trial for contempt in labor dispute cases

In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court. June 25, 1948, c. 645, 62 Stat. 844.

Federal Rules of Civil Procedure

RULE 3.

COMMENCEMENT OF ACTION

A civil action is commenced by filing a complaint with the court.

SUPREME COURT CONSTRUCTIONS

Ragan v. Merchants Transfer & Warehouse Co., 1949, 69 S.Ct. 1233, 337 U.S. 530, 93 L.Ed. 1520.

RULE 4.

PROCESS

- (a) Summons: Issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it for service to the marshal or to a person specially appointed to serve it. Upon request of the plaintiff separate or additional summons shall issue against any defendants.
- (c) By Whom Served. Service of all process shall be made by a United States marshal, by his deputy, or by some person specially appointed by the court for that purpose, except that a subpœna may be served as provided in Rule 45. Special appointments to serve process shall be made freely when substantial savings in travel fees will result.
- (d) Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. . . .

RULE 8.

GENERAL RULES OF PLEADING.

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

RULE 38.

JURY TRIAL OF RIGHT.

(a) Right Preserved. The right of trial by jury as declared by the Seventh-Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

RULE 65.

INJUNCTIONS.

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

APPENDIX B.

Decision and Contempt Order of District Judge. March 1, 1966

THE COURT: Gentlemen, this is a difficult case and one involving men who work on the docks.

We have an agreement and it is alleged that that agreement was violated. The matter came before me after the arbitration, after the arbitrator, Mr. Weiss, decided against the Union and its contention. The opinion of the arbitrator, Mr. Weiss, was upheld and I issued an order on September 15, 1965 enforcing that order.

Here we have men hired to do work and then they refuse under the conditions mentioned. They stop work and influence others not to report.

Both sides, of course, have a right to be here. That's the purpose of this Court.

I have heard the evidence presented and the arguments thereon. As long as the Union is functioning as a union, it must be held responsible for the mass action of its members. That means this: When the members go out in the manner in which they did and do an illegal act, the Union is responsible. They can't say, "We didn't do that as Union members." If members of the Union—then they do act under the laws of this country—if it is a mass action, the Union is responsible, and that's what we have here. It is a mass action along the Philadelphia waterfront, and it is illegal to strike under the circumstances, so the Union cannot escape responsibility on the basis that a leader or some of the leaders urged a man or some men or many men to return to work, but they did not return to work.

So in my opinion the Union in effect approved what was done and must be held responsible. They violated the order of this Court and therefore shall be adjudged in civil contempt. I hold the Union, the officers and the men who

participated responsible in contempt of court and at this time civil contempt only.

The fine against the Union will be \$100,000 per day effective this date at 2:00 P. M., the first payment to be made within 24 hours to the Clerk of the United States District Court, and every day thereafter as long as the order of this Court is violated.

There will be a further hearing on this matter in the event that anything is desired to be presented by either or both counsel, and I will reserve the time, Monday at 2:00 P. M.

Exception noted.

(Concluded at 6:45 P.M.)

[Court of Appeals Appendix, 226a-27a]

APPENDIX C.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 15804

PHILADELPHIA MARINE TRADE ASSOCIATION

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,

Appellant

APPEAL FROM ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

> Argued June 14, 1966 Reargued September 29, 1966

Before Ganey and Smith, Circuit Judges, and Kirkpatrick, District Judge

Opinion of the Court

(Filed November 17, 1966)

By Kirkpatrick, District Judge.

This is an appeal from an order of the District Court holding the defendant union in contempt for violation of a previous order of the court. The order (affirmed by this court August 11, 1966) which was the basis of the contempt proceeding, directed the union to comply with an arbitration award in a dispute as to the proper interpretation of a term of its collective bargaining agreement with the Marine Trade Association. Sometime after the entry of

that order, a widespread work stoppage closing the Port of Philadelphia occurred because the men were dissatisfied with the arbitrator's award.

The Court, at 6:45 P.M. on March 1, after hearing, held the union responsible for the mass action of its members, adjudged it to be "in civil contempt only" and imposed a fine of "\$100,000 per day effective this date at 2:00 P.M." (the time when the hearing began) "the first payment to be made within 24 hours.... and every thereafter (sic) as long as the order of this Court is violated." The record made before the trial court fully justifies the Court's finding that the mass action of the members of the union was, in fact, the action of the union. The union appealed the next day.

The character of the order, whether for civil or criminal contempt, was the subject of a reargument in this court. Of course, the fact that the judge called his action a judgment in civil contempt, though persuasive, is not conclusive. However, under the rule laid down by the Supreme Court in Shillitani v. United States, June 6, 1966,

the judge was clearly right.

In the Shillitani case the court announced a perfectly clear, simple, and easily applied test for determining whether a penalty imposed in a contempt proceeding is for a civil or criminal contempt. The court said, "The test may be stated as: what does the court primarily seek to accomplish by imposing sentence?" It seems that in this case there can hardly be much doubt that the judge was primarily, if not solely, seeking to put an end to the strike, and that he may have had in mind some thought of punishment as well does not affect the nature of the proceeding.

The fact that the order of \$100,000 per day was made "effective" at a time more than four hours past, with the first payment not due until the following day, is no indication that its purpose was punitive rather than coercive—rather the contrary. It would be hard to think of any good reason why the judge, if he was imposing a fine solely

as a punishment for a criminal effense, would date it back. On the other hand, it would be entirely logical for the judge in this case to fix a past hour as the effective date of his order so as to give a starting point for the first 24-hour period at the end of which the first payment was to be made.

Of the several points raised by the appellant the only one which merits extended notice is the contention that the union was entitled to a trial by jury and that the Court's refusal to comply with a written demand therefor was a deprivation of due process. Plainly, due process is not involved. What is involved, however, is whether it was error to deny the union a jury trial.

Title 18 U.S.C. 3692°, upon which the union bases its claim to a right of trial by jury, was originally a part of the Norris-LaGuardia Act. The union contends that it applies to all contempt proceedings growing out of a labor dispute but, on its face, it applies only to cases of contempt for violation of certain injunctions or restraining orders.

The order under review is not an injunction or a restraining order but an order under Section 301 of the Labor Management Relations Act, 29 U.S.C. 185, for specific performance of the bargaining agreement which made the award final and binding. This court has already so ruled. Nor does it involve or grow out of a labor dispute. There was a labor dispute between the plaintiff and the union, but it had been settled by the arbitrator's award in accordance with the bargaining agreement and was no longer alive. The order arose not from the labor dispute but from the union's conduct in failing to carry out the Court's order.

Moreover, Congress in 1948 took the subject matter of 3692 out of the Norris-LaGuardia Act and made it a part of the criminal code. The natural inference to be drawn from

^{* &}quot;In all cases of contempt arising under the law of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury."

that action is that Congress intended the protections provided by 3692 to be accorded to defendants in criminal proceedings and that that section is simply not applicable in cases of civil contempt in which the court is seeking only to obtain compliance with an order.

The order of the District Court will be affirmed.

APPENDIX D.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 15,804

PHILADELPHIA MARINE TRADE ASSOCIATION

VS.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,

Appellant

(D. C. Civil No. 38647)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: Ganey and Smith, Circuit Judges, and Kirkpatrick, District Judge.

Judgment

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the District Court rendered orally in open court March 1, 1966 and in transcript filed March 2, 1966 be, and the same is hereby affirmed, with costs.

ATTEST:

IDA O. CRESKOFF Clerk

November 17, 1966

APPENDIX E.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nő. 15,804

PHILADELPHIA MARINE TRADE ASSOCIATION

V.

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, LOCAL 1291,
Appellant.

Sur Petition for Rehearing.

 Present: Staley, Chief Judge, McLaughlin, Kalodner, Hastie, Ganey, Smith, Freedman, Seitz, Circuit Judges, and Kirkpatrick, District Judge.

The petition for rehearing filed by INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291 in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,
WILLIAM F. SMITH
Judge

Dated: January 6, 1967

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Supreme Court of the United S

October Term, 1967.

No. 78.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, ITS OFFICERS AND MEMBERS, Petitioners,

PHILADELPHIA MARINE TRADE ASSOCIATION.

On Writ of Certiorari to the United States Court of Appeals

For the Third Circuit.

BRIEF FOR PETITIONER.

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Supreme Court of the United States.

OCTOBER TERM, 1967.

No. 78.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL 1291, ITS OFFICERS AND MEMBERS,
Petitioners,

PHILADELPHIA MARINE TRADE ASSOCIATION,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR PETITIONER.

OPINIONS OF THE COURTS BELOW.

The District Court below did not render any opinion, but filed an order which is printed in the Record at pp. 150-51. The opinion of the Court of Appeals for the Third Circuit, reported at 368 F. 2d 932, is printed in the Record at p. 157. The order of the Court of Appeals for the Third Circuit denying rehearing is printed in the Record at p. 161.

JURISDICTION.

The judgment of the Court of Appeals for the Third Circuit was entered on November 17, 1966 (R. 160). The order denying rehearing was entered on January 6, 1967 (R. 161). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

In a case arising out of a labor dispute, the Trial Judge entered an order enforcing the arbitrator's award without explaining it, and he refused to state whether it restrained a work stoppage; thereafter, a "wildcat" strike occurred because of a new dispute, which the union, in good faith, could not avert or stop; the union demanded arbitration, which the employers contended violated the court's order, and they made an ex parte oral "report" to the Trial Judge who conducted an immediate hearing without requiring a complaint specifying the alleged contempt and held the union in contempt for the "mass action" of its members; did not the Trial Judge commit fundamental error in:

- (a) conducting a hearing and holding the union in contempt, notwithstanding that the court had no jurisdiction to entertain the proceedings under Section 4 of the Norris-LaGuardia Act; (this question is fully covered in petitioner's argument in Case No. 34)
- (b) holding a contempt hearing upon an ex parte "report" without requiring the filing of a written complaint;
- (c) denying the union the right to a jury trial under the Act of 1948;
- (d) holding the union in contempt because of the "mass action" of certain of its members who engaged in a "wildcat" strike?

STATUTES AND RULES INVOLVED.

The statutory provisions and rules involved are: Norris-LaGuardia Act, Act of March 23, 1932, c. 90, Sec. 4, 47 Stat. 70, 29 U. S. C. A. 104; Act of June 25, 1948, c. 645, 62 Stat. 844, 18 U.S.C.A. 3692; Federal Rules of Civil Procedure 3, 4, 8, 38(a), 52(d) and 65(d). They are set out in Appendix hereto.

STATEMENT OF THE CASE.

Philadelphia Marine Trade Association (PMTA) represents the employer group under the terms of a collective bargaining agreement with Local 1291, International Longshoremen's Association (ILA) in the Port of Philadelphia.

The agreement provides for the employment of long-shoremen on the day before the commencement of the work. Article 10(6) provides that the employer may, at 7:30 a.m., "set back" the starting time from 8:00 a.m. to 1 00 p.m., in which event the longshoremen receive a one-hour guarantee for the morning (No. 34, R. 7). Article 9(h) provides that if the employment is terminated because of inclement weather, the men shall receive a four-hour guarantee (No. 34, R. 12). Section 28 of the agreement provides for grievance and arbitration procedure and requires that all disputes and grievances "of any kind or nature whatsoever arising under the terms and conditions of this agreement" shall be submitted to a grievance committee; and if the dispute is not settled at that level, then it must be submitted to arbitration (No. 34, R. 12-13).

On April 25, 1965, T. Hogan Corporation, one of the employer members of PMTA, hired a number of longshoreman gangs for an 8:00 a.m. start the next day. The following morning Hogan changed the starting time to 2:00 p.m. because of inclement weather and offered only one hour of the guarantee time for the loss of the morning's employment under Article 10(6) of the union agreement. The union objected, claiming that the men were entitled to four hours' pay under the inclement weather clause, 9(h). The matter was submitted to arbitration and, after a number of hearings, with extensive testimony rendered by both sides,

^{1.} Since this case and No. 34 of this Term are companion proceedings, the latter being the injunction action from which flowed this contempt proceeding, this statement is the same as in Brief for Petitioner in No. 34, including a complete resume of the facts in both cases.

the arbitrator declined to hear summation from counsel for both sides and stated further that he did not desire any briefs from the parties. Several weeks later, he rendered a decision holding that Section 10(6) of the agreement, standing by itself, required a one-hour guarantee, and he, accordingly, rejected the union's claim for four hours. He refused to consider the inclement weather classe or any other section of the agreement than 10(6) on which he based his conclusion (No. 34, R. 16-31).²

The award of the arbitrator provided that the employer could invoke the set back clause 10(6) "without qualification" under a one-hour guarantee (No. 34, R. 31).

On July 29, 1965, another dispute erupted when Nacirema Operating Co., another employer, not involved in the prior dispute, changed the starting time from 8:00 a.m. to 1:00 p.m. because of inclement weather and offered the longshoremen one-hour guarantee time, instead of the four-hour guarantee under the inclement weather clause. The union demanded arbitration of the dispute under the agreement, but the employer frustrated the arbitration procedure by bringing an action in the federal court to extend the arbitrator's decision in connection with the dispute of April 26, 1965 to all future disputes, and sought to restrain any further union attempts to arbitrate that issue or the inclement weather clause issue and to enjoin all work stoppages in connection therewith. The

^{2.} It is extraordinary that the arbitrator should decline to hear the arguments of counsel at the end of the evidence or to request briefs so that both sides would have an opportunity to fully express their views regarding the inferences and conclusions to be drawn from the evidence and the interpretation to be given to the agreement as a whole, not merely any single section thereof.

^{3.} There is no provision in the award requiring the longshoremen to return to work because there was, in fact, no work stoppage.

^{4.} The agreement required that "all disputes" must be submitted to grievance and arbitration. Moreover, Section 28, the arbitration clause, provides that "should the terms and conditions of this agreement fail to specifically provide for an issue in dispute or should a provision of this agreement be the subject of disputed interpretation, the arbitrator shall consider port practice in resolving the issue be-

suit was treated as one for an injunction; and the District Judge scheduled an immediate hearing, by which time the longshoremen had all returned to work, and the action had become moot. Judge Body denied the union's motion to dismiss on the ground of mootness and for lack of jurisdiction, and he "retained jurisdiction" of the case so that "if anything arises", he would "handle it at that time" (No. 34, R. 45, 46, 61, 73, 82).

A new dispute arose involving an entirely different group of employers on September 13, 1965, when a large group of gangs who had been employed the day before were advised that they would be set back from an 8:00 a.m. start to a 1:00 p.m. start that day because of inclement weather, and they were offered the one-hour guarantee, instead of the four-hour guarantee under the inclement weather clause (R. 70). The union claimed the four-hour guarantee under the inclement weather clause, and the employers refused. The union demanded arbitration, which the employers denied (No. 34, R. 80-81). Instead, counsel for the employers "reported" ex parte to the District Judge, who then scheduled an immediate hearing on the basis of the "facts" reported (No. 34, R. 75). At the hearing on September 13 and 15, 1965, the union objected and moved that the "facts" be pleaded, as required by the Federal Rules of Civil Procedure (No. 34, R. 79-81, 88). This motion was summarily denied (No. 34, R. 90). The union repeated the motion to dismiss for lack of jurisdic-

fore him" (No. 34, R. 14). Furthermore, the record shows that on prior occasions, a disputed clause in the agreement was arbitrated on each occasion that a dispute arose, even though the issue was identical; and, with respect to one of the provisions in the same agreement, the identical issue was re-arbitrated as many as five times, and, on the last occasion, the arbitrator reversed his prior rulings (R. 118-119).

^{5.} In support of the motion to dismiss, counsel for the union cited this Court's decision in Sinclair Refining Co. v. Atkinson, 370 U. S. 195, but the court summarily denied the motion without examining the decision (No. 34, R. 82). The court also ignored this Court's decision in Amalgamated Assn., etc. v. Wisc. ERB, 340 U. S. 416, 95 L. Ed. 389, which held that mootness deprived a federal court of jurisdiction and required a dismissal of the complaint.

tion based on this Court's decision in Sinclair Refining Co. v. Atkinson, 370 U. S. 195 (No. 34, R. 82-83), but this motion also was summarily denied (No. 34, R. 83). The hearing proceeded on the "facts" reported to the judge. Counsel for the union refused to cross-examine any witnesses or to offer any evidence on the ground that he could not properly present any defense because of the absence of the necessary pleadings and other requirements of the Rules (No. 34, R. 95, 97, 101).

At the conclusion of the hearing, the court entered an order stating that the arbitrator's award "be specifically enforced", and that the union "comply" with said award (No. 34, R. 113). Since the arbitrator's award simply construed Section 10(6) of the agreement and refused the union's claim for four hours of guarantee time, it was completely unclear what was intended by the court's order. Union counsel, therefore, requested clarification and, particularly, to determine whether the court's order restrained a strike or a work stoppage or precluded the union from attempting to invoke the arbitration process in future disputes (No. 34, R. 111-112). Judge Body flatly refused to explain or amplify his order and to make findings as required by the Federal Rules of Civil Procedure (No. 34, R. 112-113).

^{6.} The arbitration award (No. 34, R. 30) simply denied the claim of the union for four hours and sustained the employer's position that only one hour was due under the set back clause. The award did not contain any order or instruction that the longshoremen return to work. Indeed, there was no work stoppage in connection with the dispute of April 26, 1965.

^{7.} The record shows a determined effort by counsel for clarification, and an even greater determination by the District Judge to keep defendant in the dark (No. 34, R. 111-112):

[&]quot;THE COURT: I will sign this order.

[&]quot;MR. FREEDMAN: Well, what does it mean, Your Honor?

"THE COURT: That you will have to determine, what it means.

[&]quot;Mr. Freedman: Well, I am asking. I have to give my client advice and I don't know what it means. I am asking Your Honor to tell me what it means. It doesn't—

Five months after the entry of the foregoing order, on February 24, 1966, a different group of companies employed a large number of longshoreman gangs to start work at 8:00 a.m. the following morning. The next day the employers, at 7:50 a.m., set back the starting time to 1:00 p.m. because of inclement weather and offered to pay only the one-hour guarantee instead of the four-hour guarantee under the inclement weather clause. The longshoremen protested to the union officials, who advised them to report as directed, and they would invoke the grievance and arbitration machinery in an effort to obtain the four-

"THE COURT: You handled the case. You know about it. You are arguing it doesn't fit into this case.

"MR. FREEDMAN: I am telling you very frankly now I don't know what this order means, this proposed order. It says, 'Enforcement of the award.' Now, just what does it mean? Are we being restrained from a work stoppage? . . .

"THE COURT: The Court has acted. This is the order.
"Mr. Freedman: Well, won't Your Honor tell me what it means?

"THE COURT: You read the English language and I do.

"MR. FREEDMAN: I will ask you, but it doesn't say it. I can't understand it. I am telling Your Honor I don't understand it. Now, perhaps Your Honor can explain it to me. Does this mean that the union cannot engage in a strike or refuse to work or picket?

"THE COURT: You know what the arbitration was about. You know the result of the arbitration.

"Mr. Freedman: The arbitration here was under a specific set of facts, involved an interpretation of the contract under a specific set of facts, and he made that interpretation. Now, how do you enforce it? That case is over and done with. These are new cases. Your Honor is changing the contract of the parties when you foreclose them from going to arbitration on this point again.

"THE COURT: I have signed the order. Anything else to come before us?

"MR. FREEDMAN: I know, but Your Honor is leaving me in the sky. I don't know what to say to my client."

8. The set back clause 10(6) under which the employers allegedly set back the starting time required that the longshoremen be notified at 7:30 a.m.

hour guarantee (R. 70, 86-87, 127). However, provoked by the frequency of the set backs over the past ten months, the longshoremen who had been denied employment that morning marched up and down the waterfront and succeeded in causing other longshoremen to knock off work on other vessels, despite the pleas of the union officials to continue working while they made an effort to adjust the matter with the employers. The union distributed circulars along the waterfront and made personal pleas thereafter urging the men to return to work. The employers admitted that the union and the officials did all in their power to effect the return of the men to their jobs (R. 5, 148). Even the president of the employer association admitted the sincerity of the union officials' efforts (R. 53).

The union officials orally asked the employer association to discuss the matter under Section 28, the grievance and arbitration provision in the agreement, but the employers refused. The union then sent a telegram to the employers invoking the grievance and arbitration clause under the contract (R. 29-30, 92-93). Thereupon the employers "reported" ex parte to Judge Body the "facts" relating to this latest work stoppage and claimed that the union had violated the Court's order because it sought arbitration of the issue.

No pleading or other document was filed setting forth the employer's position or its contentions, but the court nevertheless scheduled a contempt hearing a few days later, on March 1, 1966. At the outset of this hearing, the

^{9.} During the period of ten months from the time of the first dispute on April 26, 1965 to the time of the last-mentioned dispute, the employers had set back the longshoremen seventy-one times and paid only the one-hour guarantee, instead of the four-hour guarantee claimed by the longshoremen (R. 31). This became a constant source of discontent among the longshoremen and undoubtedly was the cause of growing unrest.

^{10. (}R. 70-71, 80, 82-83, 87-88, 91-92, 94-95, 104-106, 109-110, 111, 127-131, 134-136, 139-142, 144-147; Ex. R-1 (R. 39-41), Ex. R-2 (R. 151-152).)

union moved that the employers be required to file a pleading setting forth the facts and circumstances and manner in which the union was supposed to have violated the court's order, so that the union could file an answer and prepare its defense (R. 15-16).11 The court summarily denied this motion (R. 17). The union then moved for a dismissal on the ground that the entire proceeding was in violation of Section 4 of the Norris-LaGuardia Act and of this Court's decision in the Sinclair case; but the District Judge promptly denied this motion also, and directed the parties to proceed with the testimony (R. 15). The union then filed a written application for a jury trial under the Act of 1948, but Judge Body summarily denied this motion also (R. 13, 15). At the conclusion of the testimony, the District Judge rendered an oral decision from the bench holding the union and its officers and members (although neither the officers nor members were made parties at any time to the action) guilty of contempt, on the ground that the union was responsible for the "mass action" of its members, and fined the union \$100,000.00 per day, making it retroactive to 2:00 p.m. that day and for the succeeding days of the "wildcat" work stoppage (R. 150-151).

^{11.} In addition to the other defenses heretofore outlined, the union also could have alleged in an answer (if appropriate pleadings had been filed with an opportunity to answer by the union and crystallize the issues) the further defense that the employers had failed to set back the men at 7:30 a.m., as required by 10(6) of the very clause on which the employers relied. The District Judge, however, rejected all arguments that each dispute must be individually handled and ignored this argument also (R. 18).

ARGUMENT.

I. If the Basic Injunction Action Involved in Case No. 34 Is Dismissed for Lack of Jurisdiction, the Order of Contempt and the Fine Must Necessarily Fall.

Petitioner's contention that the Court below was without jurisdiction is argued extensively in the brief in Case No. 34, and will not be repeated here. If this Court should reverse the order in Case No. 34, which was construed to be a restraint against a work stoppage, the order holding the union in contempt would likewise have to be reversed, under the doctrine announced by this Court in United States v. United Mine. Workers, 330 U. S. 258, 91 L. Ed. 884. In that case, this Court stated on this precise point:

"The right to remedial relief falls with an injunction which events prove was erroneously issued, Worden v. Searls, supra (121 U. S. at 25, 26, 30 L. ed. 857, 858, 7 S. Ct. 814); Salvage Process Corp. v. Acme Tank Cleaning Process Corp., (CCA 2d) 86 F. 2nd 727 (1936); S. Anargyros, Inc. v. Anargyros & Co., (CC) 191 F. 208 (1911); and a fortiorari when the injunction or restraining order was beyond the jurisdiction of the court. Nor does the reason underlying United States v. Shipp, 203 J. S. 563, 51 L. ed. 319, 27 S. Ct. 165, 8 Ann. Cas. 265, supra, compel a different result. If the Norris-LaGuardia Act were applicable in this case, the conviction for civil contempt would be reversed in its entirety." (U. S. at 295, L. Ed. at 913) 12

^{12.} In the Court below, respondent contended that the contempt order falls with the injunction only where a compensatory fine is ordered paid to plaintiff; and not where the order was to coerce defendant into compliance. This is clearly not the law. This Court has divided contempt orders into only two categories: civil, to remedy and criminal, to punish. The remedy can be to compensate the plaintiff or to coerce the defendant. Thus, in Harris v. Texas and Pacific R. R., 196 F. 2d 88, 89-90 (7 Cir. 1952) where in civil con-

It follows that the present contempt proceeding would be abated by a termination of the injunction proceeding out of which it arose.

II. Proceeding With a Contempt Hearing Upon the Oral "Report" of a Party Without Requiring Complaint, Violated F. R. C. P. 3; Failure to Serve Such a Written Complaint Upon Defendant Violated F. R. C. P. 4; Failure to Advise Defendant by Written Complaint of What He Was Required to Defend Against Violated F. R. C. P. 8; and the Failure to Clarify and Make Findings With Respect to the Injunctive Order Alleged to Be Breached Violated F. R. C. P. 52(a) and 65(d).

The procedures followed by the employers in the District Court below in this contempt proceeding have flagrantly flowed every concept of due process of law and required legal procedure. The only papers on file herein are the Rule to Show Cause, Petitioner's Demand for a Jury Trial, and the transcript of the testimony. There is no complaint or other pleading, as required to commence the action (F. R. C. P. 3), to notify the defendant thereof (F. R. C. P. 4), or to advise defendant of what he has to defend against (F. R. C. P. 8).

With respect to the injunction order alleged to have been breached, the failure to make findings of fact and conclusions of law has already been noted and considered in our brief, in Case No. 34, which is also before this Court.

tempt, the defendant had been imprisoned, and no fine or compensation had been ordered, the Court said that, in accordance with the United Mine Workers case (quoting the First Circuit in Parker v. U. S., 153 F. 2d 66, 71) (90): "Since the complainant in the main cause is the real party in interest with respect to a compensatory fine or other remedial order in a civil contempt proceeding, if for any reason complainant becomes disentitled to the further benefit of such order, the civil contempt proceeding must be terminated.'..."

(90) (Emphasis supplied.) The same situation exists in the instant contempt case, where the fine was also not compensatory, but coercive, and was, thus remedial.

What was stated there applies with equal force here, because no contempt order should be entered unless the order alleged to be violated is sufficiently clear as to leave no doubt in the mind of the alleged violator of the activities being enjoined.

The District Judge, having ignored Rules 52(a) and 65(d) requiring findings; and refusing to clarify the injunctive order so that defendants were completely in the dark, continued with this basically erroneous procedure by ignoring every one of the remaining basic rules, and requiring petitioners to enter into a case without knowledge of the claim or charge, without affording petitioners any opportunity whatsoever for preparation; and in otherwise violating the due process requirements. Moore's Federal Practice, Volume 2, p. 1783. In Philippe v. Window Glass Cutters League, 99 F. Supp. 369, involving a civil contempt, the court held that there should be a pleading directed to the Court which sets forth the acts or conduct allegedly constituting the contempt, that there should be reasonable notice to the one charged with the contempt and a specification of the acts or conduct allegedly constituting the contempt. Said the court:

"In other words, the basic requirements of due process, notice and hearing, should be followed. The original pleading or 'accusation' should conform to the standards set by Rule 8, Federal Rules of Civil Procedure, 28 U. S. C. A., for the statement of a claim, wherein it is provided that a pleading 'shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled."

The actions of the District Judge totally ignored all of these requirements of due process, thereby setting up a trap which defendants could not escape. Yet, the Court of Appeals incredibly failed to consider or discuss this glaring failure of process and procedure. Thus, the Court below sustained a contempt order in the face of a record which established conclusively that the petitioners could not determine what acts they were allegedly prohibited from performing. This failure to follow the Rules of Civil Procedure most seriously violated petitioners' rights, indeed to the point where the union will be completely put out of business and destroyed by the order of the Court below.

More important, this departure from and indifference to the rules of procedure would undermine the due process requirements generally, and would tend to establish a rule based on the discretion and whim of individual judges without the protection of the due process requirements and the established rules of law.

III. The District Judge Erred in Holding the Union-Liable for "Mass Action" of Certain of Its Members Who Engaged in a "Wildcat Strike" Where the Record Indisputably Establishes That the Union Did Everything Possible in Good Faith to Avert and Terminate the Strike.

Although the District Judge held the petitioners in contempt only because the wildcat strike was a "mass action" which the union's repeated efforts could not prevent and terminate, and petitioners strongly contested this legal conclusion, urging that the Court of Appeals follow the decision of the Court of Appeals for the District of Columbia in *United States v. United Mine Workers*, 177 F. 2d 29, the Court of Appeals neither discussed, considered, nor passed upon this point. A Petition for Rehearing, pointing this out to the Court, was likewise unsuccessful in

obtaining judicial consideration of this most significant issue.

At the trial, the respondent admitted that the union did not cause the wildcat strike, but did everything possible to avoid it and terminate it after it started. The District Judge made the specific finding that the individual members themselves stopped work in a "wildcat" action and that the union leaders urged them to return to work (226a-227a). He made it clear that the contempt order was not predicated upon the improper actions or inaction of the union officers, but upon the lack of success in their efforts—that "they did not return to work" (227a). The union and its officers were held in contempt because the Court concluded that the union is automatically responsible for the "mass action of its members", despite the union's efforts against it.

The District Judge's "mass action" conclusion was a misapplication of a principle stated by the District of Columbia Court in United Mine Workers v. United States, 177 F. 2d 29 (1949). In that case, the District Court had held a union in contempt as responsible for "the mass action of its members". There was no evidence of any effort by union officials to prevent or terminate the strike. On appeal, the Court of Appeals affirmed, but made it very clear that such affirmance was because the union had sent no word to its striking members to return to work within the period involved (35). The Court said (at 36):

"It seems plain enough that if Lewis had sent on April 5th telegrams of a directory or advisory nature . . . neither he nor the Union would have been guilty of contempt of the court's order. . . ."

". . . we repeat that the Union was not convicted for causing the walk-out. It was convicted because it did not exercise, or attempt to exercise, whatever

^{13. 77} F. Supp. 563, 567 (D. C. 1948).

powers it had to cause its members to resume work.
. . . Quite apart from what the miners did, the Union made no attempt to direct, instruct, or persuade them to return to work, and thereby it disobeyed the court's order."

Thus, the Court made certain that the "mass action" rule emanating from that District was impressed with a specific exceptive proviso where the union attempts to have the men return to work. Subsequently, when the same parties were again before the District Court in a contempt proceeding, the same Court that announced the "mass action" rule pointed out that in view of the Court of Appeals' statement, where the record fails to demonstrate "either beyond a reasonable doubt or by clear and convincing evidence—that there has been willful contempt of this Court's order on the part of the Union", contempt does not lie (191); that

"The record in this case is different from that in the 1948 contempt proceeding against the same respondent. There it was shown that the Union had 'made no attempt to restore normal production.'...

"Following the court's order in the instant case, various telegrams, letters, and other communications were sent by the Union to its district and local branches and members, instructing the miners to return forthwith to work.

"This court does not hold that any telegram or combination of telegrams or letters would constitute a good faith compliance with an order directing action on the part of the Union. It does hold that, where the Union has sent communications such as are included in this record, the apparent good faith of such communications must be controverted not by mere suspicion based on failure to obtain results, but by clear

^{14.} United States v. United Mine Workers, 89 F. Supp. 179 (D. C. 1950).

and convincing evidence, if they are to be ruled by a court of law to constitute only a token compliance."
(89 F. Supp. at 181) (Emphasis supplied.)

As to the weight to be accorded to the evidence, the court made this significant holding:

"It may be that the mass strike of Union members has been ordered, encouraged, recommended, instructed, induced, or in some wise permitted by means not appearing in the record; but this court may not convict on conjecture, being bound to act only on the evidence before it, which is insufficient to support a finding of either criminal or civil contempt.

"I therefore, find the respondent Union not guilty of civil or criminal contempt." (89 F. Supp. at 181)

It is obvious that the District Judge grossly misunderstood the "mass action" decision. The decision below has applied a legal principle without giving effect to its essential proviso, thereby erroneously convicting petitioners of contempt. The Court of Appeals failed to take cognizance of the rule, altogether. The issue is a most important one and of an overwhelmingly recurrent nature, so long as free men will be permitted to give personal expression to their complaints and desires. If the broad swath cut by the affirmance below is permitted to stand, free individual expression will bear a penalty that organized labor will never survive.

The decision of the Court of Appeals for the District of Columbia stands unopposed. The Court of Appeals below passed over and failed to give any consideration whatever to this vital issue, both on the original argument and on the petition for rehearing. Courts may not abandon rules of law, no matter how strongly they may disapprove of strikes or of wildcat work stoppages.

IV. The Lower Court's Refusal to Grant a Jury Trial Violated the Act of 1948 and Was a Deprivation of Due Process and in Conflict With the Strict Policy Declared by This Court in Beacon Theatres v. Westover, 359 U. S. 500.

This Court has made it crystal clear and beyond doubt that the right to trial by jury is basic in our jurisprudence and that any deprivation thereof must be most closely scrutinized. Thus, in Beacon Theatres v. Hon. Harry C. Westover, District Judge, 359 U. S. 500, 3 L. Ed. 2d 988 (1959), a mandamus proceeding upon refusal to grant jury trial, Mr. Justice Black most emphatically declared:

- "'Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." (U. S. at 501, L. Ed. at 992)
- ". . . In the Federal courts this (jury) right cannot be dispensed with, except by the assent of the parties entitled to it. . . ." (U. S. at 510, L. Ed. at 997)

The basic right to a jury trial is stated in the Constitution, Amendment Seven. Federal Rule of Civil Procedure 38(a) provides:

"The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate."

More specifically, Congress has enacted a special legislation to be applicable in all contempt actions growing out of labor disputes. The Act of Congress of June 25, 1948, c. 645, 62 Stat. 844, 18 U. S. C. A. 3692, provides:

"§ 3692. Jury trial for contempt in labor dispute cases

"In all cases of contempt arising under the law of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed." (Emphasis supplied.)

This clear and unequivocal language repels any distinctions which would cut the heart out of the letter and spirit of the Act. It covers all cases of contempt without regard to the nature of the contempt, so long as a labor dispute is involved.

At the outset of the contempt proceeding before the District Court on March 1, 1966, petitioners' counsel filed a written demand for jury trial, citing said statute. This was denied by the Court. The Court of Appeals held that the jury trial statute of 1948 is inapplicable because it applies only to injunctions in labor disputes, and that "the order under review is not an injunction . . . but an order ... for specific performance of the bargaining agreement which made the award final and binding. . . . Nor does it involve or grow out of a labor dispute". The Court rationalized that although there was a labor dispute between employer and union, nevertheless "it had been settled by the arbitrator's award . . . and was no longer alive": that the order arose from the union's failure to comply with the Court's order. This is indeed an amazing conclusion in view of the record which establishes, beyond the shadow of a doubt, that the controversy was still raging and had resulted in a wildcat strike by members of the union, a strike which originated in a specific labor dispute which did not even have its factual beginnings until long after the arbitration award. It is hardly less than incredible that the Court could reach such a conclusion in

the face of the evidence in this case. Moreover, in every case of contempt "in any case involving or growing out of a labor dispute", the labor dispute necessarily becomes one step removed by the intervention of a basic order of injunction, or, as the Court terms it, of specific performance. In either situation, the case still involves or grows out of "a labor dispute". It is this same reasoning concerning the same injunctive order that is to be reviewed by this Court in the parent case, No. 34. This play on semantics and the reasoning of the Court below was forthrightly rejected by the New York District Court in Marine Transport Lines v. Curran, 55 L. C. 11748 (2/27/67), as follows:

"This is a labor dispute. Petitioner does not claim otherwise. The court is being asked to enjoin a work stoppage. This is the reality of the situation, whatever may be the form of the proceeding. To the extent that Philadelphia Marine Trade Ass'n v. International Longshoremen's Ass'n. (54 L. C. para. 11,393) 365 F. 2d 295 (3rd Cir. 1966), cert. granted, 35 U. S. L. Week 3277 (1967), is to the contrary, I decline to follow that decision."

The Court of Appeals has also attempted to circumvent the clear language of the Act by applying "natural inference" to deprive petitioners of jury trial. It holds that the 1948 statute took the subject matter of Section 3692 out of the Norris-LaGuardia Act and made it a part of the criminal code and that the "natural inference" is that this section is applicable only in criminal proceedings, and that the instant proceeding is civil. This "inference" ignores the clear, mandatory language of the Section, which specifically directs a jury trial in "all cases of contempt . . . in any case involving or growing out of a labor dispute . . ." (Emphasis supplied.) We must assume that "the legislative purpose is expressed by the ordinary meaning of the words used" Richards v. U. S., 369 U. S. 1, 9, 7 L. Ed. 2d 492, 498 (1962). The intent that the section shall apply to

all cases of contempt in labor dispute injunctions could not be more clearly or succinctly expressed.¹⁵

The language of the statute is not only unambiguous but the legislative history when it was first incorporated into the Norris-LaGuardia Act ¹⁶ confirms the *broad* guarantee of the Act. The House bill had applied only to criminal contempts; the Senate bill covered all cases of contempt. At conference, it was agreed that the word "criminal" be eliminated (75 Cong. Rec. 6450—remarks by Senator Norris). Senator Norris thus explained the Conference Bill to the Senate:

"The Senate also, in that compromise, succeeded in striking the word 'criminal' out of the House section. Under the House bill, before a man would be entitled to a jury trial on a charge of contempt, it would first have to appear that it was a criminal contempt. Under the Senate bill it could be either civil or criminal. Under the compromise made, the language of the Senate was agreed to, so that now anyone charged with any kind of a contempt arising under any of the provisions of this act will be entitled to a jury trial in the contempt proceedings:" 75 Cong. Rec. 6453, (March 18, 1932) (Emphasis supplied.)

Similarly, before the House of Representatives, Congressman Dyer said, of the Conference Bill:

". . . The House provision provided for criminal contempts, that there should be a jury trial in such cases. We struck out the word 'criminal', and a jury

^{15.} To use the language of Chief Justice Warren in the Richards case (U. S. at 9, L. Ed. at 498): "We believe that it would be difficult to conceive of any more precise language Congress could have used to command application" of this section to all labor dispute contempt cases, civil or criminal "than the words it did employ" in this Section.

^{16.} Act of March 23, 1932, c. 90, Sec. 11, 47 Stat. 72, 29 U. S. C. A. 111, upon which the Act of 1948 was based. See Reviser's Note, 19 U. S. C. A. 3692.

trial is now in order for contempt, civil or criminal." 75 Cong. Rec. 6337 (March 16, 1932) (Emphasis supplied.)

Thus, the original statute, as it appeared in Section 11 of the Norris-LaGuardia Act was applicable to all cases of contempt, whether civil or criminal, arising under that Act. The 1948 amendment broadened the jury guarantee by providing for jury in "all cases of contempt . . . in any case involving or growing out of a labor dispute." The 1948 Act not only preserved the jury to all cases of contempt, but broadened it to cover any labor dispute whether arising under Norris-LaGuardia or not.

In face of such a clear mandate, only if a specific exception to this provision is statutorily declared, can a labor contempt case be insulated from this protection. Constitution of H. S.

tion of U. S., Amendment Seven; F. R. C. P. 38(a).

The inclusion of Section 3692 in Title 18, U. S. C., does not limit its effect to cases of criminal contempt only. This section is a re-enactment of Section 11 of the Norris-La-Guardia Act, 29 U.S. C. A. 111. The only change is that while the original provision was limited to all cases arising "under this Act" (Norris-LaGuardia), the re-enactment is applied to all cases "of contempt arising under the laws of the United States governing . . . injunctions . . . in any case involving or growing out of a labor dispute. Therefore, Congress must be held to have intended that the language of the new section should derive its meaning from definitions supplied or reached under the Norris-LaGuardia Act, which was not limited to criminal contempt, but applied as well to civil. This Court has already made it clear that the general purpose of the 1948 revision of the Criminal Code was to codify and revise, while preserving the original intent. U. S. v. Cook, 384 U. S. 257, 16 L. Ed. 2d 516 (1966). A change in intent or application can be assumed only if there is a specific change of substantive language or some other "specific indication that Congress had receded from the intention it clearly expressed". Above all, the words must be given "their fair meaning in accord with the evident intent of Congress . . . as evidenced by common usage . . . " Id.17

The legislative history and the clear language of the Act compel the conclusion that it applies to all cases of contempt and makes a jury trial mandatory if requested, regardless of whether the contempt be criminal or civil—so long as it grows out of a labor dispute.

Petitioners made timely demand for a jury trial under the Act of 1948 in writing and orally, but were denied this vital right. For this reason alone the contempt hearing conducted by the Court below should be deemed a nullity and contempt order and fine declared a nullity.

CONCLUSION.

The Trial Judge ignored and violated virtually every procedural and substantive rule and every concept of due process from the taking of jurisdiction in this case to the conclusion in holding the union in contempt.

In sustaining the Trial Judge, the Court of Appeals completely ignored and refused to give consideration to the vital points involved, such as the violations of the Rules in failing to require a complaint and the other mandatory procedural safeguards, and in failing to touch on or give any consideration to the substantive features as the "mass action" holding. These points were vigorously pressed below and again highlighted in a petition for rehearing—but all to no avail.

^{17.} The same principle has been applied to the 1948 revision of the Judicial Code, 28 U. S. C. A. In Fourco Glass Co. v. Transmirra Prod. Corp., 353 U. S. 222, 228, 1 L. Ed. 2d 786, 790 (1957), this Court said: "For it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect unless such intention is clearly expressed." The "natural inference" drawn by the Court below, in the instant case, clearly conflicts with this rule. The only change clearly expressed was to apply the jury right to "all" contempt proceedings growing out of labor disputes.

The judgment of the Court below should be reversed.

Respectfully submitted,

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APPENDIX.

Norris-LaGuardia Act, 29 USCA.

§ 104. Enumeration of specific acts not subject to restraining orders or injunctions.

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

- (a) Ceasing or refusing to perform any work or to remain in any relation of employment;
- (b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;
- (c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;
- (d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

- (e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;
- (f) Assembling peacably to act or to organize to act in promotion of their interests in a labor dispute;
- (g) Advising or notifying any person of an intention to do any of the acts heretofore specified;
- (h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and
- (i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. Mar. 23, 1932, c. 90, § 4, 47 Stat. 70 (Norris-LaGuardia Act).

18 U. S. C. A.

§ 3692. Jury trial for contempt in labor dispute cases

In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court. June 25, 1948, c. 645, 62 Stat. 844.

Federal Rules of Civil Procedure.

RULE 3.

COMMENCEMENT OF ACTION.

A civil action is commenced by filing a complaint withthe court.

RULE 4.

PROCESS.

- (a) Summons: Issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it for service to the marshal or to a person specially appointed to serve it. Upon request of the plaintiff separate or additional summons shall issue against any defendants.
- (c) By Whom Served. Service of all process shall be made by a United States marshal, by his deputy, or by some person specially appointed by the court for that purpose, except that a subpoena may be served as provided in Rule 45. Special appointments to serve process shall be made freely when substantial savings in travel fees will result.
- (d) Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. . . .

RULE 8.

GENERAL RULES OF PLEADING.

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction

to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

RULE 38.

JURY TRIAL OF RIGHT.

(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

RULE 52.

FINDINGS BY THE COURT.

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Finding of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or. any other motion except as provided in Rule 41(b). As amended Dec. 27, 1946, eff. March 19, 1948; Jan. 21, 1963, eff. July 1, 1963.

RULE 65.

INJUNCTIONS.

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

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Supreme Court of the United States

OCTOBER TERM, 1967.

No. 78.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, ITS OFFICERS AND MEMBERS,

Petitioners,

v.

PHILADELPHIA MARINE TRADE ASSOCIATION, Respondent.

ON WRIT OF CERTIORABI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT.

QUESTIONS PRESENTED.

Where a Union was ordered by the District Court to abide by and comply with an Arbitrator's Award and where the evidence disclosed that the officers of the Union precipitated a wildcat, illegal strike in violation of the Arbitrator's Award; that they castigated and ridiculed the Award and sought to re-arbitrate the Award which was final and binding, was the Union properly adjudged in civil contempt by the Court below?

Where a Union was ordered by the Court below to abide by and comply with an Arbitrator's Award was the Union properly adjudged in civil contempt for the mass action of its members who participated in a wildcat, illegal strike in violation of the Arbitrator's Award and the Order of the Court below?

STATUTE INVOLVED.

The Labor Management Relations Act, Section 301(a), 61 Stat. 156, 29 U. S. C. A. 185, which provides as follows:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organization, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE.

This is an appeal from an order of the District Court adjudging the petitioner in civil contempt for violating an order of the Court which required the petitioner to abide by and comply with an Arbitrator's Award. Petitioner was fined \$100,000.00 per day prospectively for each day commencing with the day of the hearing, that it failed to comply with the Court's order. However, the exact amount of the fine due has not been determined since that decision is still pending in the District Court.

The record relating to the Order of the District Court which was violated is presently on appeal before this Court in Case No. 34. Briefly, this record shows that in February, 1965, the parties hereto, the Philadelphia Marine Trade Association (PMTA) and International Longshoremen's Association, Local 1291 (Union), entered into a new Collective Bargaining Agreement which extended until September 30, 1968. On April 26, 1965, a dispute arose as to the interpretation of a particular section of the contract. The parties submitted this issue of contract interpretation to an Impartial Arbitrator who ruled in

favor of the PMTA in an Award dated June 1, 1965. Under this Award the PMTA had the right to set back gangs of longshoremen from an 8:00 A. M. start to a 1:00 P. M. start "without qualification" subject to the payment of five hours of guaranteed pay, one hour for the morning period and four hours for the afternoon period (No. 34, R. 6-9; 19-26; 30-31).

On July 30, 1965 the Union refused to comply with the Arbitrator's Award and on August 2, 1965 a complaint was filed by the PMTA in the District Court under Section 301 of the Labor Management Relations Act, 29 U.S. C. A. 185, for specific enforcement of the Arbitrator's Award. A hearing was held on August 3, 1965. This hearing was continued without an order being entered because of repeated assurances by counsel for petitioner that the Union was bound by the Arbitrator's Award and intended to comply with it in the future. However, about six weeks later on September 13, 1965, despite the assurances given to the District Court, the Union refused to comply with the Arbitrator's Award for the second time. After a hearing on September 15, 1965 the Trial Court entered an order enforcing the Award of the Impartial Arbitrator (No. 34, R. 3-6; 35; 38; 40; 43-44; 59-60; 83: 113).1

On February 25, 1966, an identical dispute arose over the setback clause and the Arbitrator's Award. Eight gangs of longshoremen were employed for two vessels which were docked at Pier 98, South Wharves, Philadelphia (R. 20). These gangs were set back at 7:30 A. M. from an 8:00 A. M. start to a 1:00 P. M. start (R. 18). Some of the men complained to a Union Business Agent, Smith, relative to the set back. This Union official, instead of informing the men that they were properly set back under

^{1.} The order was clear and precise. It referred to the award which was the subject of the hearing and which had been the subject of extensive arbitration hearings between the parties. It required that the award be "specifically enforced" by petitioner and it also required petitioner to "comply with and to abide by the said Award" (No. 34, R. 113).

the contract and in accordance with the Arbitrator's Award, told them that they had a "good beef" (R. 74).2

As a result, at 1:00 P. M. that day the gangs involved refused to work in accordance with the contract (R. 20-22). The following day, Saturday, February 26, 1966, these gangs also refused to work. They knocked off nine gangs of longshoremen working on two other vessels at Pier 98 South Wharves and also went along the entire waterfront knocking off all the other vessels which were working in the Port. This activity on Saturday morning involved forty-eight gangs or one thousand fifty-six longshoremen and fourteen vessels (R. 22-23; 47).

In view of the above work stoppages, a meeting was arranged between representatives of PMTA and the Union on February 26, 1966, in the offices of the PMTA. meeting was attended by the President, Vice-President and Executive Secretary of the PMTA and the President, two International Vice-Presidents, four Business Agents and the two Financial Secretaries of the Union (R. 24). At this meeting the Union officials admitted that the Arbitrator's Award was binding on them and that it covered the existing dispute (R. 26). They stated they intended to "live by it" and that they would go down to the Hiring Center the following morning to get their men "to go back to work in accordance with our contract" (R. 49). Following this meeting the PMTA sent the Union a telegram confirming the agreement reached at that meeting (R. 26. 50).

^{2.} This was a repetition of the Union's antagonistic tactics towards the award which were brought out at the hearings on August 3 and September 15, 1965 where it was uncontradicted that the Union did not agree with the Award and did not intend to abide by it (No. 34, R. 65).

^{3.} It is significant that the Union did not raise any question that the gangs were not properly notified regarding the set-back (R. 26; 49-50). Section 10(6) did not require notice to each longshoreman by 7:30 A. M. The established practice was to notify the Joint Dispatching Office by that time (No. 34, R. 56-57; 119).

At the conclusion of the above meeting the PMTA assumed that the illegal work stoppage would be terminated the following day and that the longshoremen would return to work in accordance with their contract. On Sunday, February 27, 1966, nine vessels and thirty-one gangs of longshoremen were scheduled to work (R. 26). But no work was performed that day, and the evidence shows that the Union officials made only a token effort to get the men to return to work. Then, on Monday, February 28, 1966, the Union sent two telegrams to the PMTA. The first telegram denied the statements contained in the PMTA's telegram regarding the meeting on February 26th, and castigated the Arbitrator's Award as an "infamous award" which the Union did not intend to "perpetuate" (R. 29). The second telegram demanded that the Employer's rights under the Arbitrator's Award be re-arbitrated in spite of the fact that the Arbitrator's Award was final and binding (R. 30).

On Monday, February 28th, twenty-two vessels and sixty gangs of longshoremen were involved in this illegal work stoppage which shut down the entire Port of Philadelphia (R. 26). The Trial Court was notified of this crisis on the waterfront and a hearing was set for 2:00 P. M., that day. This hearing was attended by counsel for the Union. At the hearing, counsel for PMTA outlined in great detail, covering nine transcribed pages (R. 3-9), the background of what had happened and requested the Court to set a further hearing for the purpose of citing the Union . for contempt of court and fining the Union for violating the Court's Order (R. 8.9). A rule to show cause was prepared and executed by the Court and a copy was served on counsel for the Union (R. 11-12). This rule clearly showed that the hearing on March 1, 1966 was for the purpose of determining whether the Union should be ". . . held in contempt for violating the order of this court issued the fifteenth day of September, 1965 . . . " (R. 13).

On March 1, 1966, the hearing was held before Judge Body. At this hearing the testimony clearly established that the Union had violated the Court's Order. John J. Smith, a Business Agent of the Union, admitted that on Friday morning, February 25th, when the gangs of longshoremen told him they were set back he told them that they had a "good beef" (R. 14). However, at 1 o'clock that afternoon when the men reported for work and refused to work, he was not at the Hiring Center. He allegedly had a "domestic problem" (R. 78). The following day, Saturday, February 26th, he didn't arrive at the Hiring Center until some time between 8:00 and 8:45 A. M., although his regular arrival time was 7:00 A. M., because he was "out celebrating the night before" (R. 79). Later on Saturday morning as he rode up Delaware Avenue he saw men knocking off ships "all along the piers" (R. 80).4

Richard L. Askew, the President of the Union, testified that at the meeting with the PMTA on Saturday, February 26th, he told the representatives of the PMTA that "the knocking off of the vessels on Saturday morning was unauthorized" and that he "did not condone the action of the men in knocking off the vessels" (R. 97). He also agreed to go to the Hiring Center on Sunday, February 27th, to urge the men to return to work and he further agreed that the Union was going to abide by Judge Body's decision enforcing the Arbitrator's Award (R. 98). He was then confronted with the language in the Union's telegram (Exhibit P-3, R, 29), which was forwarded to the PMTA on Monday morning (February 28th) and which referred to the Arbitrator's Award as an "infamous award" which the Union did not intend to "perpetuate". He was asked whether this language in the telegram conveved to the PMTA the Union's alleged intention to be

^{4.} Smith's subsequent activities which clearly show that he did nothing to terminate the problem which he created are referred to at page 14 infra.

bound by the Arbitrator's Award (R. 100-101). His evasiveness in attempting to avoid answering this question is recorded at R. 101-102. He finally answered: "Where does the award fit into this picture?" (R. 102). His further evasiveness with the succeeding question which was whether he intended to be bound by the award is recorded at R. 103-104.

In addition, Askew did not address the men at the Hiring Center on Sunday morning, February 27th, as he promised to do at the meeting with the PMTA on February 26th (R. 106). He also admitted that he did not address the men at the Hiring Center on the following days, February 28th and March 1st. In spite of the large number of men who were congregating at the Hiring Center on February 28th, he claimed that he "didn't notice" them (R. 107). He admitted that he has used the microphone and public address system at the Hiring Center in the past to convey messages to the men but with respect to this case he said:

"I didn't use the microphone any day at all to address the men about returning to work or anything about this dispute" (R. 107).

On Tuesday, March 1st, when Askew arrived at the Hiring Center there was "a large crowd there. There were so many, I couldn't tell how many" (R. 109). Nevertheless, he didn't use the microphone and only talked to about twenty-five to thirty men inside the dispatching office (R. 109). He admitted that some of his members requested a Union meeting so that "they could vote as to whether or not they wanted to return to work." But he refused this

^{5.} This is the same witness who according to the uncontradicted testimony at the previous hearing before Judge Body said that he would not comply with the award and would not be bound by the award (No. 34, R. 65).

^{6.} Actually, he precipitated the incident which occurred on September 13, 1965, by using the same microphone to countermand the employer's orders in violation of the Arbitrator's Award (No. 34, R. 91-97).

request (R. 110-111). He advised these members that the "work stoppage is illegal; it is in violation of the law, in my judgment" (R. 111). When he was asked "... why were you asking for a grievance or arbitration of this dispute, if the dispute at the present time is illegal and in violation of the law?" He replied:

"That's a hard question to answer, I will tell you the truth" (R. 111-112).

He admitted that the Arbitrator ruled that the Employers have the right "to set back without qualification" and that "this ruling was made as an interpretation of the contract between the parties" (R. 115). He was then questioned as follows (R. 116):

"Q. —Didn't you agree at the meeting on Saturday at noontime that you would do everything you could to get the men to go back to work?

A. We agreed, we stated that we were going to do all that we could to try to get the men to go to work and we did that.

Q. Well, do you think sending a telegram on Monday, and asking for a grievance and arbitration and calling the award an infamous award is getting the men to go back to work?

A. Oh, I think the award is ridiculous."

After the above testimony was concluded the Court Below entered its oral order adjudging the Union in civil contempt for violating its order of September 15, 1965, and holding the Union responsible for the mass action of its members (R. 150-151).

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ARGUMENT.

I. A Reversal of the Basic Action for Specific Performance of the Arbitrator's Award Would Not Require a Reversal of the Contempt Order Involved in This Appeal.

Petitioner argues that a reversal of the basic action for specific performance of the Arbitrator's Award in Appeal No. 34 would necessarily require a dismissal of the Contempt order involved herein. Petitioner cites as its sole authority an excerpt from United States v. United Mine Workers of America, 330 U. S. 258, 67 S. Ct. 677, 91 L. Ed. 884 (1947). However, that excerpt applies only to civil contempts which are based upon compensatory relief, whereas the fine in this case was solely coercive in nature. As this Court pointed out further on in that decision:

"Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained" (id. at 303).

And as this Court stated immediately prior to the excerpt quoted in petitioner's brief:

"It does not follow, of course, that simply because a defendant may be punished for criminal contempt for disobedience of an order later set aside on appeal, that the plaintiff in the action may profit by way of a fine imposed in a simultaneous proceeding for civil contempt based upon a violation of the same order" (emphasis supplied) (id. at 295).

In a most recent case, Brotherhood of Locomotive Firemen and Enginemen v. Bangor & Aroostook Railroad Company, et al., 55 L. C. 11, 914, decided May 12, 1967 by the U.S. Court of Appeals for the District of Columbia the same argument was made as made herein by petitioner. There the Court said:

"The Mine Workers case dealt with, and has become a basic directive in regard to, the right of defendants in criminal and compensatory civil contempt proceedings to attack the validity of the underlying orders on which the alleged contempts are based. That case did not, however, specifically deal with a coercive civil contempt order in this regard.

It would appear to be fallacious to hold that the efficacy of coercive civil fines is to be governed by the compensatory fine rationale of Mine Workers, which allows alleged contemnors to challenge the propriety of the underlying order in defense of their otherwise contemptuous disobedience of that order. Certainly, a prospective, coercive fine, . . . will serve to preserve the court's 'power to order maintenance of a status quo,' only to the degree that litigants are prevented from pre-judging the validity of that court's orders. Rather, as is true of punitive fines under Mine Workers, it would seem that prospective, coercive fines should be enforceable despite a subsequent determination by the District Court, or on appeal, that the disregarded order was in fact beyond the ordering court's jurisdiction." (id. at 19,027)

But in this case respondent has not asked for and has not received any compensatory relief. The fine was levied solely to coerce petitioner into compliance with the District Court's order. The contempt order clearly provides that the fine was to be paid "to the clerk of the United States District Court" (R. 151). Therefore, petitioner's argument must necessarily fall.

II. A New Complaint Was Not Required to Commence the Contempt Action. This Proceeding Was Properly Instituted by a Rule to Show Cause Why Petitioner Should Not Be Held in Contempt for Violating the District Court's Order, and the Federal Rules of Civil Procedure Were Complied With.

Petitioner contends that a separate complaint should have been filed to commence the contempt action; that petitioner was required to enter the contempt hearing "without knowledge of the claim or charge", and "without affording petitioner any opportunity whatsoever for preparation".

The facts are that the contempt hearings on February 28 and March 1, 1966 were a continuation of an equitable. action which was started on August 2, 1965 by a complaint against the petitioner seeking specific enforcement of the Arbitrator's Award which is involved in this matter. The hearings which were held in connection with that complaint resulted in the Court's order of September 15, 1965 which enforced the Arbitrator's Award and ordered petitioner "to comply with and to abide by the said Award". All of the pleadings and the testimony taken at the various hearings are a matter of record and are presently on file in this Court in connection with Appeal No. 34. Furthermore, at the hearing on February 28, 1966, counsel for respondent made a detailed statement consisting of nine transcribed pages (R. 3-9), outlining the nature of respondent's charge against petitioner and the specific relief requested. Petitioner was represented at the hearing by its counsel. Counsel for respondent stated:

"'I would ask your Honor to set a hearing at which time we would like to have the union cited for contempt of your Honor's order and have the union fined an amount which would be appropriate under the circumstances." (R. 9)

In addition, at the conclusion of the hearing on February 28, 1966, an order containing a rule to show cause was signed by the Court which clearly gave petitioner written notice that the hearing on March 1st was for the purpose of determining whether the petitioner should "be held in contempt of Court for violating the order of this Court issued the fifteenth day of September, 1965, . . ." (R. 13).

It is therefore submitted that the statement of counsel at the hearing on February 28th and the order granting the rule to show cause gave petitioner all of the notice which was required under the extreme emergency which existed in this case, which was a wildcat, illegal strike which tied up the entire Port of Philadelphia.

Petitioner relies solely on Philippe v. Window Glass Cutters, 99 F. Supp. 369 (W. B. Ark. 1951), in connection with this point. However, that case does not support petitioner's position since it cites with approval Section 1439 of Barron and Holtzoff, Federal Practice and Procedure, Volume 3. Reference to that Section will disclose that the learned authors stated at page 508 that:

"Where parties are already subject to the jurisdiction of the Court no new process is required to bring them in to answer contempt charges . . ."

Furthermore, all of the requirements set forth in Philippe v. Window Glass Cutters (supra) were met in this case. There was notice and a hearing. There was also "a short and plain statement" of (a) the Court's jurisdiction, (b) "the claim showing that the pleader is entitled to relief" and (c) "a demand for judgment".

Petitioner's further contention that the hearings below constituted a "trap" and that the Court's specific enforcement order was not clear and, therefore, they "could not determine what acts they were allegedly prohibited from performing" stretches credibility to the breaking point. All petitioner had to do was to impress upon their members that they were bound by the Arbitrator's Award and the order of the District Court. Instead, they took the position that they were not bound by the award; they told their members that they had a "good beef" when the members objected to the award; they sent telegrams calling the award "infamous" and stated that they were not going to "perpetuate" it; and in spite of the finality of the award they insisted that the award be re-arbitrated.

III. The Union Was Properly Held Responsible on Clear and Convincing Evidence for the Mass Action of Its Members in Violating the Court's Order Enforcing the Arbitrator's Award.

Petitioner admits that the law imposes a responsibility upon a Union for the mass action of its members which violate a Court order against it. However, petitioner contends that it should be excused in this case because it "exerted every reasonable effort to prevent and terminate the work stoppage."

This contention crumbles under the overwhelming evidence to the contrary as set forth in the record in this case. This testimony shows that on February 25, 1966 a Union official, Smith, actually precipitated the work stoppage by telling the men who were properly set back under the Arbitrator's Award that they had a "good beef" in

protesting the set back.

The following day, February 26th, the entire Port of Philadelphia was shut down because of this "set back" dispute. The Union then acknowledged that the strike was unauthorized and illegal. The Union officials promised to go to the Hiring Center on February 27th and urge the men to return to work. However, on that day they made only a token effort and on February 28th, they openly and publicly expressed their defiance of and their refusal to comply with the Court's Order and the Arbitrator's Award by sending telegrams (Exhibits P-2 and P-3; R. 29-30), which castigated the Arbitrator's Award as an "infamous

award", which they did not intend to "perpetuate" and demanded re-arbitration of a dispute which had been settled by a final and binding Arbitrator's Award. These telegrams alone without any other testimony were sufficient to substantiate the Union's violation of the District Court's order which required the Union to abide by and comply with the Arbitrator's Award and showed an entire lack of good faith compliance on petitioner's part.

However, the other testimony also demonstrated unequivocally that the Union did not exert every reasonable effort to terminate the work stoppage prior to the hearing on March 1, 1966. The testimony shows that, Smith, who triggered the work stoppage, wasn't around on Friday afternoon (February 25, 1966) or Saturday morning (February 26, 1966) at the Hiring Center at the appointed starting times to lend his best efforts to terminate it. In the morning on February 28th he only talked to small groups of men at the Hiring Center out of a congregation of six hundred to seven hundred men and he made no effort to address these men over the public address system which admittedly was available. He also didn't make any effort to go to Pier 98 on February 28th and address the men whom he had told on February 25th that they had a "good beef". Pier 98 was only a half mile away from the Hiring Center and Smith had his car there but he made no effort to correct the situation by talking to these men and urging them to return to work (R. 82-84).

Askew's testimony, as President of the defendant Union, shows in greater detail the Union's violation of the Order of the Court Below and its total lack of good faith efforts to comply with it. His evasiveness in attempting to avoid answering pertinent questions relating to his willingness to abide by the Arbitrator's Award is reflected in the record (R. 101-104). He testified in open court before the Court's contempt order was rendered that: "I think the award is ridiculous" (R. 116). He didn't make any effort to address the men at the Hiring Center on Feb-

ruary 27th, as he promised at the meeting on February 26th and he did not address the men at the Hiring Center on February 28th or March 1, 1966. And he made no effort to use the microphone to communicate with the men as he admittedly had done in the past. He also refused a Union meting which was suggested by his own members as a method of ending the strike (R. 110-111).

Moock, the fourth International Vice-President of the defendant Union, made no constructive efforts to terminate the strike. He appeared at the Hiring Center on February 27th for only a few minutes and didn't address the men at all. He was also at the Hiring Center on March 1st, the day of the hearing before the District Court. This was the day that the largest number of men was at the Hiring Center during the whole strike (R. 136). Yet, Moock stayed there "only a few minutes" and didn't use the microphone to advise the men that their work stoppage was unauthorized and that they should return to work (R. 137).

After all the testimony was presented and the arguments of counsel were concluded, Judge Body declared a short recess in order to consider the evidence (R. 150).

When he returned he announced his decision holding petitioner in civil contempt. It is obvious from reading his decision that the learned Trial Judge was not impressed with or persuaded by petitioner's testimony regarding its alleged efforts to terminate the work stoppage, since he said: "So in my opinion the Union in effect approved what was done and must be held responsible" (R. 150). And the Circuit Court of Appeals after reviewing the testimony in this case said:

^{7.} Indeed, this is the same witness who took it upon himself to use the microphone at the Hiring Center on September 13, 1965, to countermand employment orders issued in accordance with the Arbitrator's Award. His action at that time resulted in the Court's Order of September 15, 1965 enforcing the Arbitrator's Award.

^{8.} It is also significant to note that after the Court's Order was entered on March 1st, a Union meeting was held on March 2nd and the men returned to work on March 3rd.

"The record made before the Trial Court fully justifies the Court's finding that the mass action of the members of the union was, in fact, the action of the union." (R. 158).

Petitioner states that: "At the trial, the respondent admitted that the union did not cause the wildcat strike, but did everything possible to avoid it and terminate it after it started." Brief, p. 14). This statement is blatantly erroneous as no such admission appears in the record in this case.

It must be remembered that on Saturday morning February 26, 1966, respondent had no knowledge that the work stoppage which started the preceding day was caused by Smith's advice to the men that they had a "good beef". After the meeting between the parties on Saturday afternoon, respondent assumed that petitioners were sincere in their statements that the work stoppage was illegal and unauthorized and that they would so advise their members and terminate it the next day. However, this assumption was shattered on Monday, February 28, 1966, when petitioners repudiated the agreement reached on Saturday, castigated the award and demanded re-arbitration.

There is testimony by one of respondent's witnesses who admitted that Askew sounded "sincere" early Saturday morning when he asked some men to return to work. (R. 53). This was long before the Union's true intentions were known. And respondent's counsel made no such statement as the record clearly discloses.

9. Counsel for respondent stated .

"Mr. Scanlan: If your Honor please, I just want to say that it is quite obvious what has happened. We thought that the Union was going to do everything that it could to get the men to go back to work until they sent these telegrams on Monday and asked for this matter to be re-arbitrated and castigated the award of Mr. Weiss as an infamous award and said they were not going to perpetrate it and then the witnesses have admitted on the stand that while they went down and told the men to go back to work, they didn't tell the men that the work stoppage

D: 10

Under the law and the evidence there can be no doubt that petitioner was responsible for the work stoppages involved in this case since they stemmed from a refusal to comply with the Court's Order of September 15, 1965 enforcing the Arbitrator's Award. Petitioner's antagonism to that award is well documented in this case and in case No. 34. If voluntary arbitration is to be encouraged and protected the petitioner cannot be permitted to escape its responsibilities to comply with a valid and lawful order of a Federal Court. As stated in one of the cases ctied by petitioner: 10

"So that the rule of law which I have announced is the only rule which will preserve the unions, because if the plan is adopted throughout the country of trying to

was unauthorized, and I don't know how we can get these men to go back unless they realize that their work stoppage is unauthorized.

It is one thing for the Union to say that the work stoppage is unauthorized and illegal in Mr. Corry's office, but the men who have to hear this are the men down on the waterfront, and the people who have to tell them this are the officials of the Union, and this is something that they have failed to do, and in failing to do that, they have shown that they do not intend to abide by the arbitrator's award which was the essence of the order which Your Honor issued here. The order of Your Honor specifically enforced the arbitrator's award and decreed that the Union should comply with and abide by this award.

Now, Mr. Askew has testified on the witness stand that he considers it to be a ridiculous award, and it is quite obvious that if somebody considers the award to be ridiculous, they do not intend to comply with and to abide by it, and I think—

The Court: I understand your position." (R. 148-149)

10. United States v. United Mine Workers, 77 F. Supp. 563 (D. C. 1948). The law is eminently clear that so long as a union is functioning as a union it must be held responsible for the mass action of its members since experience shows that men don't act collectively without leadership. See U. S. v. United Mine Workers, (supra); aff'd. 177 F. 2d 29; cert. denied 338 U. S. 871; 94 L. ed. 535; Portland Web Pressmen's Union v. Oregonian Pub. Co., 188 F. Supp. 859 (D. Ore. 1960); United Textile Workers v. Newberry Mills, Inc., 238 F. Supp. 366 (W. D. S. C. 1965); and U. S. v. Brotherhood of Railroad Trainmen, 96 F. Supp. 428 (N. D. Ill. 1951):

use a wink, a nod, a code, instead of the word 'strike', and if that sort of a maneuver is recognized as valid by the Courts, then you will have among the unions lawlessness, chaos, and ultimate anarchy. . . . " (id. at 567).

IV. There Is No Constitutional or Statutory Right to a Jury Trial for Civil Contempt Arising Out of a Violation of the Court's Order Under Section 301 of the Labor Management Relations Act Enforcing the Arbitrator's Award.

Petitioner finally contends that it was entitled to a jury trial under the Constitution and under Section 3692 of Title 18, U. S. C. A. "regardless of whether the contempt be criminal or civil."

That this case involves a civil contempt proceeding rather than a criminal contempt proceeding cannot be seriously disputed. It meets all the criteria for civil contempt as enunciated by this Court in its most recent decisions.¹¹

- (a). The "character and purpose" of the contempt order was remedial—to coerce the Union into compliance with the Court's previously issued order;
- (b) The "act of disobedience" consisted solely "in refusing to do what had been ordered", i.e., to comply with the Court's order enforcing the Arbitrator's Award—not "in doing what had been prohibited."
 - (c) The Trial Judge was "primarily seeking to accomplish" compliance with his order rather than

^{11.} Shillitani v. United States, 384 U. S. 364, 86 S. Ct. 1531, 16 L. ed. 2d 622 (1966); Cheff v. Schnackenberg, 384 U. S. 373, 86 S. Ct. 1523, 16 L. ed. 2d 629 (1966). See also; Compers v. Bucks Stove and Range Company, 221 U. S. 418, 31 S. Ct. 492, 55 L. ed. 797 (1911); United States v. United Mine Workers, 330 U. S. 258, 67 S. Ct. 677, 91 L. ed. 884 (1947); Penfield Co. v. Securities & Exchange Commission, 330 U. S. 585, 67 S. Ct. 918, 91 L. ed. 1117 (1947).

punishment for past violations, which began as of February 25, 1966.

- (d) The fine was "conditional and prospective". It was to be paid "within twenty-four hours" from the time the hearing started and for "every day thereafter as long as the order of this Court is violated". In addition, the Court set a further hearing for Monday March 7th (six days later)—obviously for the purpose of determining whether the contempt order had been complied with and to give the Union an opportunity "to purge itself."
- (e) The Union carried "the keys—in its own pockets." It could have stopped the running of the fine up until 2:00 P. M. on March 2nd by ordering its members to return to work and to comply with the Arbitrator's Award and the Court's order.
- (f) The Trial Judge definitely "viewed the matter as civil contempt", since he specifically referred to the action as "civil contempt" on two occasions in his order. (R. 150-151)
- (g) The Trial Judge also complied with the guidelines established by this Court in footnote 9 of Shillitani (supra) which require the Court Below to resort to "criminal sanctions only after he determines, for good reason, that the civil remedy would be inappropriate," by stating that:
 - "I hold the Union, the officers and the men who participated responsible in contempt of court and at this time civil contempt only." (Emphasis supplied.) (R. 151)
- (h) The proceeding was between the original parties (PMTA and the Union) and was instituted by respondent and tried as part of the main equity action.

(i) The relief requested was primarily for the benefit of respondent.

In any event, the fine cannot be classified as "unconditional" or "retrospective" since the amount of the fine and the method of its enforcement has not been decided. This matter is still pending before Judge Body. On March 25, 1966, a motion was filed by respondent for a hearing "to fix amount of fine and to enforce judgment of civil contempt". An order was entered that day setting a hearing for April 13, 1966 (R. 153, 156). Petitioners fully participated in that hearing and introduced testimony for the purpose of mitigating the amount of the fine. No mention whatsoever was made by petitioners at that hearing or at any other hearing that the proceeding was for criminal contempt.

The Shillitani and Cheff cases (supra) are also dispositive of the other issue raised by petitioners that they were constitutionally entitled to a jury trial.

In Shillitani, this Court said:

"We hold that the conditional nature of these sentences renders each of the actions a civil contempt proceeding, for which indictment and jury trial are not constitutionally required." (U. S. at 365, L. ed. at 624)

In Cheff, this Court said:

"... a jury trial is not required in civil contempt proceedings as we specifically reaffirm in Shillitani, supra." (U.S. at 377, L. ed. at 632)

The only statute which appellant cites in support of its demand for a jury trial is Section 3692 of the Act of June 25, 1948, c. 645, 62 Stat. 844, 18 U. S. C. A. 3692. 12

^{12. &}quot;§ 3692. Jury trial for contempt in labor dispute cases. In all cases of contempt arising under the laws of the United States government the issuance of injunctions or restraining orders in any

However, as we shall point out below, Section 3692 of Title 18 applies only to criminal contempt proceedings under the Norris-LaGuardia Act. The basic action in this case was brought under Section 301 of the Labor Management Relations Act, 29 U. S. C. A. 185, to enforce the Arbitrator's Award and is not subject to the provisions of the Norris-LaGuardia Act. This action was for specific performance and was not for injunctive relief. Therefore, Section 3692 (supra) which covers the issuance of "injunctions or restraining orders," cannot apply to this action.

That Title 18 of the United States Code, of which Section 3692 is a part, applies only to "Crimes and Criminal Procedure" is evident from the title itself. In addition, the legislative history of Title 18 shows beyond any doubt that it was intended solely to revise and codify the criminal laws of the United States. When Title 18 was first introduced in the House of Representatives, its sponsor, Representative Keogh said:

"With this goal in mind and as part of the preliminary work of the next edition of the Code, the Committee on Revision of the Laws, asked for and received an authorization from Congress on June 28, 1943 to prepare a revision and codification of title 18, Crimes and Criminal Procedure, and title 28, the Judicial Code and Judiciary, of the United States Code.

On June 22, 1943, I told the House that we proposed to bring to it for final approval and enactment into positive law, 'a model judiciary code and criminal code, the kind of codes that this great body should present to the people of the greatest country.'

. The first of these two projects is now complete and is represented by a bill to revise, codify, and enact

case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed . . ."

into absolute law title 18 of the United States Code, entitled "Crimes and Criminal Procedure" which I have just introduced." (90 Congressional Record 8165)

During the debate on Title 18 (H. R. 3190), Representative Robison explained the "scope of the bill", as follows:

"This bill is a restatement of the Federal laws relating to crimes and criminal procedure in effect on April 15, 1947. Most of these laws are now set forth in title 18 of the United States Code and are based upon the 1909 Criminal Code—which was the last revision of criminal laws enacted by the Congress—and subsequent laws on the subject.

You will find no radical changes in the philosophy of our criminal law in this bill." (93 Congressional Record 5049)

When Title 18 was introduced in the Senate, its sponsor, Senator Wiley, stated that its purpose was as follows:

"The purpose of the bill is to codify and revise the laws relating to Federal crimes and criminal procedure.

As I said, it is along the line of bringing together the Federal criminal statutes into one place, so as to avoid the necessity of going from one volume to another inorder to ascertain what the criminal law of the Nation is." (94 Congressional Record 8721)

The legislative history of Title 18 further demonstrates that Section 3692 is the specific transposition to Title 18 of Section 11 of the Norris-LaGuardia Act. Therefore, even if it's assumed, arguendo, that Title 18, relates to civil actions as well as criminal actions, in order for Section 3692 to apply the proceeding below would have to

be based on the provisions of the Norris-LaGuardia Act. This is not the case as we have referred to above.

That Section 3692 was intended after the codification, just as before, to refer only to contempt proceedings under the Norris-LaGuardia Act, is clear from the reviser's notes, its legislative history and Court decisions. The reviser's notes as contained in Title 18, Section 3692 are as follows: "Based on section 111 of Title 29, U. S. C. 1940 ed., Labor (March 23, 1932, c. 90, s. 11, 47 Stat. 72)." This reference is to section 11 of the Norris-LaGuardia Act.

The change in the introductory clause of Section 11 of the Norris-LaGuardia Act reading, In all cases arising under this Act," to read in Section 3692, "In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute" is also significant. By this change, Section 3692 was clearly anchored to cases arising under the Norris-LaGuardia Act, the only existing federal statute in which the jurisdictional touchstone is defined in terms of injunction proceedings in cases "involving or growing out of a labor dispute". The legislative history on this subject is set forth in the footnote.

Since Section 3692 relates only to contempt proceedings arising under the Norris-LaGuardia Act, it is plainly inapplicable to proceedings under the National Labor Relations Act. If Section 3692 was intended to apply to pro-

^{13.} See Norris-LaGuardia Act, preamble, Sections 4, 7, 9, and 10 (29 U. S. C. §§ 101, 104, 107, 109, 110). "Changes in phrase-ology" of this nature made in the transposition of various provisions of law to Title 18 did not "change [the] meaning or substance" or extend the scope and effect of the provisions. H. Rep. No. 304, 80th Cong., 1st Sess.

^{14. 90} Cong. Rec. 8164-8166; 93 Cong. Rec. 5048-5049; 94 Cong. Rec. 8721-8722; H. Rep. No. 152, 79th Cong., 1st Sess.; H. Rep. No. 304, 80th Cong., 1st Sess., S. Rep. No. 1620, 80th Cong., 2d Sess. In the codification into Section 3692, Section 11 as such was specifically repealed. 62 Stat. 683, 862, 866.

ceedings under the National Labor Relations Act, it seems reasonable that this radical change in the purpose of Section 11 of the Norris-LaGuardia Act would have provoked at least passing comment by Congress. To the contrary, at no time during the more than a year which elapsed between the passage of the 1947 amendments to the National Labor Relations Act and the adoption of the revision of Title 18 was it even intimated that Section 3692 affected contempt proceedings under the National Labor Relations Act.

Moreover, when the Civil Rights Act of 1957 (71 Stat. 638; 42 U. S. C. 1971 et seq.), was being considered by the Congress, it was made plain that Section 3692 applied only to those contempts which grew out of the disobedience of an order issued pursuant to the provisions of the Norris-LaGuardia Act. See statement of Congressman Celler (103 Cong. Rec. 8682-8687); and the statement of Congressman Keating (ibid., pp. 8688-8691). Congressman Celler's statement referred to above is particularly enlightening since he pointed out that he voted for the Norris-LaGuardia Act and he adopted as part of his remarks a brief entitled "Jury Trials in Contempt Proceedings With Special Reference to Labor Injunctions". That brief contains the following comments with respect to Section 3692:

"An examination of the legislative history of section 3692 of title 18, United States Code indicates beyond any question of a doubt that there was no legislative intent to make a substantive change in the law.

In other words, section 3692 was based upon the original section 11 of the Norris-LaGuardia Act. In addition, the revision of title 18 specifically repealed that provision of the Norris-LaGuardia Act, as indicated by the reviser's notes.

Nowhere in there any mention made of any intent to change substantive law. The whole effect of such enactment was merely to transfer from title 29 into title 18 the provision providing for a jury trial in criminal contempt proceedings arising out of certain labor disputes."

Consequently, petitioner's demand for a jury trial to have substance would require the conclusion that Section 3692, which replaced Section 11 of the Norris-LaGuardia Act, worked a silent enlargement of the scope of Section 11 which is unwarranted from the legislative history referred to above. And, as this Court stated with respect to the Railway Labor Act, the National Labor Relations Act "cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act." Virginia Ry. Co. v. System Federation No. 40, 300 U. S. 515, 563, 57 S. Ct. 592; 81 L. ed. 789 (1937).

The cases which have been decided since Section 3692 was enacted also make it abundantly clear that that section applies only to actions instituted under the Norris-LaGuardia Act. In *Mitchell v. Barbee Lumber Co.*, 33 F. R. D. 544 (1964), the Court said:

"My examination of this matter leads me to conclude that Section 3692 which was enacted into positive law in 1948, represents, in substance, a re-enactment of now repealed Section 111 of the Norris-LaGuardia Act." (29 U. S. C. A. Secs. 101-115)

In In Re Piccinini, 35 F. R. D. 548 (1964), the Court said:

"Title 18 U.S. C. A. Sec. 3692 which gives an accused the right of a jury trial in labor disputes is based upon title 29 U.S. C. A. Sec. 111 of the Norris-LaGuardia Act."

In Madden v. Grain Elevator Flour and Feed Millworkers, 334 F. 2d 1014 (7th Cir. 1964), cert. denied 379 U. S. 967, 85 S. Ct. 661, 13 L. ed. 560 the Court said:

"Section 3692 covers matters formerly found in Section 11 of the Norris-LaGuardia Act. It is inapplicable to a proceeding under the Labor-Management Relations Act." (Emphasis supplied.)

While the Madden case related to an injunction obtained by the National Labor Relations Board, it is significant that the Court's language refers to a "proceeding" under the Labor Management Relations Act and is not limited to an action instituted by the Board.

The latest case on this subject is Brotherhood of Locomotive Firemen and Enginemen v. Bangor & Arosstook Railroad Company, et al. (supra), in which the Court of Appeals for the District of Columbia said:

". . . Secondly, and decisively, we feel that Sec. 3692 applies only to those contempt proceedings arising from injunctions governed by the Norris-LaGuardia Act, which, as we discuss below, does not apply to prohibit or govern injunctive proceedings regarding acts determined to be violative of the Railway Labor Act . . . " (id. at 19,025)

The authorities cited above amply demonstrate that the petitioner was not entitled to a jury trial either under the Constitution or under Section 3692.

CONCLUSION.

The records in these two cases (Nos. 34 and 78) taken together clearly show that petitioners knew what was contemplated by the Order of the Court below which enforced the Arbitrator's Award. They knew that they were directed to comply with and abide by that Award. They knew that the Award provided that respondent's members were entitled to set back gangs without qualification. But in spite of this, they attempted to scuttle the Award by a persistent policy of non-compliance. In doing so, they not only violated the Award but they also violated the Order of the Court below. Such violations cannot be tolerated if court orders are to be respected and voluntary arbitration is to be promoted.

The promotion of healthy labor relations through the arbitration process, the kingpin of our national labor policy, requires strict adherence to Arbitration Awards and to Court orders enforcing these Awards. The petitioners' harassing tactics, their recalcitrance and their opposition to the Award and the Order enforcing the Award are well-documented. These admittedly unwarranted and illegal actions closed the entire Port of Philadelphia for several days and caused tremendous economic losses to the members of respondent association. Consequently, the petitioner Union was properly adjudged in civil contempt on clear and convincing evidence for the illegal mass actions of its members, and the Order of the Court below should be affirmed.

Respectfully submitted,

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BUPREME COURT, D. B.

Office-Supreme Court, U.S. FILED

IN THE

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Supreme Court of the United Traters, CLERK

OCTOBER TERM, 1967

No. 34

International Longshoremen's Association, Local 1291,

Petitioner.

_V __

PHILADELPHIA MARINE TRADE ASSOCIATION,

Respondents.

No. 78

International Longshoremen's Association, Local 1291, Its Officers and Members,

Petitioners,

PHILADELPHIA MARINE TRADE ASSOCIATION,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF OF MARITIME SERVICE COMMITTEE, INC. AND TANKER SERVICE COMMITTEE, INC., AMICI CURIAE

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 34

International Longshoremen's Association, Local 1291,

Petitioner,

PHILADELPHIA MARINE TRADE ASSOCIATION.

Respondents.

No. 78

International Longshoremen's Association, Local 1291, Its Officers and Members,

Petitioners.

PHILADELPHIA MARINE TRADE ASSOCIATION,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF OF MARITIME SERVICE COMMITTEE, INC. AND TANKER SERVICE COMMITTEE, INC., AMICI CURIAE

STATEMENT OF INTEREST

The Maritime Service Committee, Inc. (hereafter "MSC") and the Tanker Service Committee, Inc. (hereafter

This brief amici curiae is filed pursuant to consents, given by all parties to the above titled cases, mailed to the Deputy Clerk of this Court on August 7, 1967.

"TSC") are associations of employers whose members operate United States flag passenger, dry cargo and tanker vessels out of Atlantic and Gulf ports, including the Port of Philadelphia where this case arose. The fleets operated by MSC and TSC members include more than 335 vessels, manned by more than 3,600 licensed officers and 12,500 unlicensed crewmen. These employees are represented by eight labor organizations under contracts negotiated and administered by MSC and TSC.

Members of MSC and TSC also, either directly or indirectly, provide employment for thousands of shoreside employees who perform various tasks that must be completed on schedule if efficient, effective and economical vessel operation and cargo handling are to be assured. Of particular importance in these cases is the orderly and expeditious performance of all longshoring functions, which are usually under the aegis of stevedore companies whose employees are represented on the Atlantic and Gulf Coasts by various locals of the International Longshoremen's Association, including the petitioner, Local 1291.

THE PRINCIPAL ISSUE

The principal issue in these proceedings is whether §4(a) of the Norris-LaGuardia Act (47 Stat. 70, 29 U.S. C.

*The members of MSC, all of whom operate passenger and/or dry cargo vessels, are: Farrell Lines, Inc., Grace Line, Inc., Gulf & South American Steamship Co., Inc., Lykes Bros. Steamship Co., Inc., Marine Transport Lines, Inc., Moore-McCormack Lines, Inc., United Fruit Company and United States Lines, Inc.

The members of TSC, all of whom operate tanker vessels are: Amoco Shipping Company, Gulf Oil Corporation, Hess Oil & Chemical Corp., Keystone Shipping Company, Marine Transport Lines, Inc., Mathiasen's Tanker Industries, Inc., National Bulk Carriers, Inc., The Pure Oil Company, Rye Marine Corporation, Sinclair Oil Corporation, Texaco, Inc., Texas City Refining, Inc., Trinidad Corp., and United Maritime Corporation.

§104(a)) precluded the District Court from ordering the petitioner (hereafter sometimes the "Union") specifically to enforce and comply with an arbitration award which the parties had expressly agreed would be final and binding (No. 34, R. 114-115).

The issue before the arbitrator was whether subparagraphs 5 and 6 of Section 10 of the parties' association-wide settlement memorandum

"are to be considered together so that the Employer's right to set back a gang from 8:00 AM to 1:00 PM is conditioned solely upon the non-arrival of a vessel in port, or is the Employer's right under Section 10, sub-paragraph 6 to set back a gang without qualification!" (No. 34, R. 20)

Respondent PMTA contended that subparagraph 6 of Section 10 established an unqualified right to set back gang starting times from 8:00 A.M. to 1:00 P.M., provided that one hour's pay was guaranteed for the morning period and four hours' pay was guaranteed for the afternoon period (No. 34, R. 20-22). The Union maintained that subparagraph 6 was limited so that a gang's starting time could be set back only when a vessel failed to arrive in port. According to petitioner, if a gang's starting time was set back to 1:00 P.M. for any other reason, the employees were entitled to four hours' pay for the morning period (No. 34, R. 26).

On June 11, 1965, after hearings in which both parties offered evidence to establish bargaining history, the arbitrator issued his award that subparagraph 6 was controlling and that petitioner's contention, that the subparagraph "can only be invoked by the Employer because of non-arrival of a vessel in port, is denied." (No. 34, R. 30-31)

On August 2, 1965, alleging that petitioner had refused to comply with the award, respondent commenced an action in the United States District Court for the Eastern District of Pennsylvania under §301 of the Taft-Hartley Act (61 Stat. 156, 29 U. S. C. §185), seeking an order enforcing it (No. 34, R. 3-6). At hearings held on August 3 and September 15, 1965, it was established that petitioner had refused to obey the award (No. 34, R. 65-66, 93-94, 96-97).

The Union called no witnesses in the District Court, but moved to dismiss, alleging, among other things, that

"The relief sought by the plaintiff is, in fact, injunctive relief which Federal Courts are without jurisdiction to grant by virtue of Section 4 of the Norris-La-Guardia Act, 29 U. S. C., Sec. 104. See Sinclair Refining Company v. Samuel M. Atkinson, et al., 370 U. S. 195, 8 L. Ed. 2d 440, 82 S. Ct. 1328." (No. 34, R. 32)

On September 15, 1965, the court issued an order that the arbitration award "be specifically enforced by defendant, International Longshoremen's Association Local 1291, and the said defendant is hereby ordered to comply with and to abide by the said Award. (No. 34, R. 113) On August 11, 1966, the Court of Appeals for the Third Circuit affirmed the judgment of the District Court (No. 34, R. 127). In its opinion, the court explained that §4(a) of the Norris-LaGuardia Act, as applied by this Court in Sinclair Refining Co. v. Atkinson, 370 U. S. 195 (1962), had not deprived the District Court of jurisdiction:

"Under the facts and the law, the holding of the District Court that it had the jurisdiction to enforce the crystal clear judgment of the Arbitrator was sound and right. It was not in conflict with the Norris-LaGuardia Act but completely within the Lincoln Mills and Steelworkers opinions, supra, and a vital part of the all important enforcement of the specific performance of the admittedly agreed to arbitration clause in the labor contract before us." (No. 34, R. 123)

While petitioner's appeal had been pending, a contempt proceeding was brought against it by respondent. The contempt was premised upon the precipitation by the Union's officials of a mass refusal by petitioner's members to accept the employers' right to set back as provided for in the award (No. 78, R. 4, 7, 70, 101-104, 116, 123, 149). Ultimately, virtually all longshore operations in the Port of Philadelphia were tied up (No. 78, R. 5). On March 1, 1966, after a hearing had been held, the District Court adjudged the petitioner in civil contempt and fined it \$100,000 a day (No. 74, R. 150-151). The Court of Appeals affirmed (No. 78, R. 157-60).

In No. 34, this Court granted certiorari to review the judgment of the Court of Appeals affirming the order of the District Court enforcing the arbitration award (No. 34, R. 129). In No. 78, certiorari was granted to review the judgment of the Court of Appeals affirming the contempt order (No. 78, R. 162).

BASIS OF INTEREST

Petitioner argues that §4(a) of the Norris-LaGuardia Act, as applied by this Court in the Sinclair case, precludes the federal courts from specifically enforcing arbitration awards and exercising their contempt powers to secure compliance with such mandates. Despite its agreement to final and binding arbitration, petitioner says in effect, that it is free to engage in concerted refusals to work

under the contractual conditions ruled applicable by an arbitrator any time it disagrees with his award.

Disputes arising under labor contracts are thus to be tried twice: first in the arbitral forum and then by economic combat, subject only to time-consuming and generally inadequate damage proceedings. The inevitable results would be chaos during the administration of labor agreements, a gradual abandonment of the arbitration process, and a return to economic warfare to settle matters that could and should otherwise be disposed of under the emerging common law of the labor contract. The amici submitting this brief are vitally interested in preventing this return to industrial anarchy.

The maritime industry on the East and Gulf Coasts, in which respondent and these amici are major factors, has long been plagued by highly volatile labor relationships, both aboard ships and at shore side. Because of the nature of the business, maritime employers are particularly vulnerable to unannounced work stoppages over arbitrable grievances arising during the term of their contracts. To meet this problem—to insure that disputes that arise under the contracts are decided by arbitration rather than through economic warfare—the parties have included emergency procedures in their contracts empowering arbitrators expeditiously to resolve such disputes.

To illustrate, Section 28 of the PMTA agreement authorizes the permanent arbitrator, upon request of either party, to visit the work place and render "an immediate decision at job site" (No. 34, R. 13). And, in those cases where the arbitrator is not requested to visit the job, his decision must be rendered within 48 hours of the conclusion of the hearings (No. 34, R. 14). Similarly, the

contracts administered by these amici contain provisions for expedited arbitration and procedures whereby an alleged breach of the no-strike clause may be brought before an arbitrator within 24 hours, with the arbitrator being empowered to issue an order requiring the affected union to cease and desist.

These arbitration clauses, hammered out in collective bargaining, are expressly designed expeditiously and finally to settle any kind of dispute that can arise under the contract. Were the rationale of the Sinclair case to prevent enforcement of awards made under these clauses, they would become nothing more than unenforceable scraps of paper and the arbitration machinery would for all practical purposes be rendered meaningless, notwithstanding the acknowledged intent of the parties who purposely designed them to assure stability in this important industry.

These amici therefore would persuade this Court that this absurd result is not required by the Norris-LaGuardia Act and that no support for it can be found in Sinclair—a case in which arbitration could not have and had not been invoked by the employer, and which had nothing to do with the enforcement of an arbitration award. On the contrary, the judgment of the District Court enforcing the arbitration award here in issue is in accord with the Nation's labor policy as reflected in the Norris-LaGuardia Act itself, in the Sinclair case, in the Taft-Hartley Act, and in a host of decisions by this Court that recognize arbitration-enforceable, effective and voluntarily agreed upon-to be a "kingpin of federal labor policy." The Third Circuit so held in No. 34, and the New York State Court of Appeals reached a similar conclusion under that State's little Norris-LaGuardia Act in Matter of Ruppert (Egelhofer), 3 N. Y. 2d 576, 148 N. E. 2d 129, 170 N. Y. S. 2d 785 (1958).

The same conclusion should be reached by this Court so that relationships evolving under labor agreements throughout the maritime industry, as well as in a host of other businesses throughout the Nation, may continue to proceed and to become stabilized under the emerging law of the labor contract being propounded by arbitrators, rather than be deranged by the use of economic force whenever a union decides to reject any award of an arbitrator that requires maintenance of the employment relationship.

SUMMARY OF ARGUMENT

T.

Norris-LaGuardia, and particularly §8, favors determination of labor disputes by voluntary arbitration. Obviously such determinations can be effective only if awards emanating from that process are to be treated as enforceable. Enforcement of the award in this case conformed with the purpose of Norris-LaGuardia, and did not involve treating any part of it as having been repealed.

Pertinent precedent in this Court is to that effect. Sinclair, as we show in Point III, had nothing to do with an arbitration award. In cases dealing with arbitration, this Court has held arbitration clauses to be a major factor in the achievement of industrial peace, and a recognized quid pro quo for unions' agreements not to strike. It has held also that the established policy of the United States, favoring arbitration in labor relations, can be effectuated only if the means chosen by the parties for the determination of controversies "is given full play."

The decisions of the court below did not ignore this major policy consideration when it refused to treat §4(a)

of the Norris-LaGuardia Act as depriving the District Court of jurisdiction. The federal courts, led by this Court, have time and again enforced arbitration awards commanding employers to reinstate employees, and thus to remain in a "relationship of employment" with their employees, as well as awards proscribing removal of plants, and the like.

Confirmation of the award in issue was thus nothing more than a logical application of the principles of those decisions in a correlative area. The Court of Appeals recognized this most basic principle and thus avoided a mechanistic and unwarranted application of §4(a) of the Norris-LaGuardia Act, which would have run afoul of our national labor policy, premised as it is upon effective and enforceable arbitration of all contract disputes. It also avoided limiting both unions and employers to an inadequate, time-consuming and exacerbating damage remedy whenever an arbitration award explicitly or implicitly commands continued maintenance of an employment relationship. Such awards are frequently issued. The inability to enforce them in federal courts would burden individual employees and unions as often as it would burden employers.

11.

The primary purpose of the Norris-LaGuardia Act is to relieve federal judges of the "impossible task" of deciding the merits of labor disputes. The Act was adopted to take them out of the business of weighing equities in such matters. This suit was not an attempt to put the courts back into that business.

Once an arbitrator has issued his award, the courts must confirm it regardless of their view of the equities and even if they would have reached a contrary conclusion. This is now an established principle of the federal law of the labor contract. Therefore, when the arbitrator has acted, the dispute is ended and the only area open to inquiry is whether the arbitrator exceeded his jurisdiction or was guilty of misconduct.

In these circumstances, the court below was not asked to issue an "injunction" in a "case arising out of a labor dispute." That dispute had been laid to rest by the arbitrator and an order directing compliance with the award would not be premised upon any of the substantive elements traditionally associated with an "injunction" and explicitly listed in §7 of the Norris-LaGuardia Act. Those elements have been held by this Court to be inapposite to an action for specific performance of the covenant to arbitrate. A fortiori such requirements are equally irrelevant to an application to enforce an arbitration award. What is relevant is the congressional policy embodied in §8 of the Norris-LaGuardia Act, favoring the resolution of labor disputes in arbitration. To apply §4(a) of the Act to preclude enforcement of such awards would make the Act selfdefeating.

III.

Petitioner's reliance on the Sinclair case lies at the root of its error, and evidences its failure to comprehend that case, the policy of the Norris-LaGuardia Act, and the role of labor arbitration in the scheme of our national labor policy under Taft-Hartley.

In Sinclair, the Court was not asked to confirm the award of an arbitrator ordering the union to cease violations of a no-strike clause, but to determine the issues in the first instance and to issue an injunction directly enforcing the no-strike clause. To comply with that request, it would have had to assess the irreparability of the injury sustained, to determine whether legal remedies were adequate and to balance the equities—all classic prerequisites to a judicial decree of injunction employed to resolve a labor dispute. The Norris-LaGuardia Act was designed to preclude this type of federal intervention into labor disputes and, as this Court held in Sinclair, §301 of the Taft-Hartley Act was not intended to interfere with that design.

In the instant case, no judicial intervention is being sought. Petitioner simply fails to recognize this vital distinction, treating Sinclair as if it applied to the enforcement of arbitrators' awards. The Sinclair case does not render arbitration awards unenforceable whenever they either explicitly or by implication command continued maintenance of the employment relationship. The policy of the Norris-LaGuardia Act, rationally viewed, and the intent of Congress as this Court has found it expressed in the Taft-Hartley Act, call for a different result. The correct conclusion is the one reached by the Court of Appeals in this case and by the New York Court of Appeals in the Ruppert case (infra, pp. 32-33). As has been aptly demonstrated by the many lawyers and teachers who have commented on the subject since Sinclair, those decisions reflect the vital considerations which require affirmance here.

POINT I

The mechanistic application of §4(a) of the Norris-LaGuardia Act urged by petitioner would subvert the stated purpose of that statute and of the Taft-Hartley Act as reflected in the emerging federal law of labor contracts.

In reaching its conclusion in No. 34, the Court of Appeals held that Sinclair Refining Co. v. Atkinson, 370 U. S. 195 (1962), did not deprive the federal courts of jurisdiction to enforce an arbitration award over the union's claim that, to do so would violate §4(a) of the Norris-LaGuardia Act. Before we discuss the Sinclair decision (Point III), we address ourselves to the reasons supporting that holding.

A. The Congressional Policy in Favor of Arbitration Being Clear, There Is No Reason to Subject an Award to the Requirements of the Norris-LaGuardia Act.

In Textile Workers Union of America v. Lincoln Mills of Alabama, 353 U. S. 448 (1957), this Court held that §301 of the Taft-Hartley Act requires federal courts to enforce arbitration clauses contained in collective bargaining agreements. In that case, the employer had argued that the Norris-LaGuardia Act precluded the courts from enforcing such covenants. This Court rejected that contention in these words:

"The question remains whether jurisdiction to compel arbitration of grievance disputes is withdrawn by the Norris-LaGuardia Act, 47 Stat. 70, 29 U.S. C. §101. Section 7 of that Act prescribes stiff procedural requirements for issuing an injunction in a labor dis-

pute. The kinds of acts which had given rise to abuse of the power to enjoin are listed in §4. The failure to arbitrate was not a part and parcel of the abuses against which the Act was aimed. Section 8 of the Norris-LaGuardia Act does, indeed, indicate a congressional policy toward settlement of labor disputes by arbitration, for it denies injunctive relief to any person who has failed to make 'every reasonable effort' to settle the dispute by negotiation, mediation, or 'voluntary arbitration.' Though a literal reading might bring the dispute within the terms of the Act (see Cox, Grievance Arbitration in the Federal Courts, 67 Harv. L. Rev. 591, 602-604), we see no justification in policy for restricting §301(a) to damage suits, leaving specific performance of a contract to arbitrate grievance disputes to the inapposite procedural requirements of that Act * * . The congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no. reason to submit them to the requirements of §7 of the Norris-LaGuardia Act." (Id. at 457-459)

Read literally, §7 of the Norris-LaGuardia Act (47 Stat. 71-72, 29 U.S. C. §107) would deprive the federal courts of jurisdiction to issue any kind of injunction "in any case involving or growing out of a labor dis-

^{*} Section 8 provides:

[&]quot;No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration." (47 Stat. 72, 29 U. S. C. §108)

pute," unless certain rigorous factual tests are met. Yet the Court held, in the language just cited, that in the light of clear congressional policy, Norris-LaGuardia was not to be so read, and that "enforcement of agreements to arbitrate grievance disputes" were not to be submitted to the requirements of §7. Similarly, in any such case, §4 of the Norris-LaGuardia Act would, on its face, deprive the federal courts of jurisdiction to issue any kind of injunction prohibiting anyone from "(a) Ceasing or refusing to perform any work or to remain in any relation of employment."

Nevertheless, on a number of occasions, this Court has issued decrees requiring arbitration to determine whether continuance or resumption of the employment relationship should be compelled. In none of these decisions was §4(a) of the Norris-LaGuardia Act held to preclude enforcement of the covenant to arbitrate. See, United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) (contracting out in violation of no lock-out provisions, resulting in layoffs); United Steelworkers v. Ambican Mfg. Co., 363 U. S. 564 (1960) (wrongful discharge requiring reinstatement); General Electric Co. v. Local 205, United Electrical Workers, 353 U.S. 547 (1957) (wrongful discharge requiring reinstatement); Goodall-Sanford, Inc. v. United Textile Workers, 353 U.S. 550 (1957) (discharge of employees "incident to a curtailment of production and a liquidation of plants").

By so ruling, the Court effectuated the policy embodied in §203(d) of the Taft-Hartley Act (61 Stat. 154, 29 U. S. C. §173(d)), that the "final adjustment by a method agreed upon by the parties • • • [would] be the desirable method for settlement of grievance disputes aris-

ing over the application or interpretation of an existing collective-bargaining agreement ." As the Court noted in United Steelworkers v. American Mfg. Co., supra at 566 "that policy can be effectuated only if the means chosen by the parties for the settlement of their differences under a collective bargaining agreement is given full play."

This "policy of the United States" is also declared in \$201 of the Act in these words:

employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes. " (61 Stat. 152, 29 U. S. C. §171(b); emphasis added.)

Compliance with the arbitration award in this case necessarily required the Union to refrain from concerted refusals to work in accordance with the terms of the contract as construed by the arbitrator. As the Court of Appeals correctly concluded, its refusal to apply §4(a) of the Norris-LaGuardia Act mechanistically was fully supported by decisions of this Court requiring enforcement of the arbitration covenant in closely related contexts. No dif-

ferent result is required when the relief sought is the enforcement of an award issued pursuant to such an arbitration clause.

B. The Federal Courts Have Often Enforced Arbitration Awards 'Proscribing or Requiring Conduct Which Could Not Be Proscribed or Required by the Courts in the First Instance Without Violating §4(a) of the Norris-LaGuardia Act.

In United Steelworkers v. Enterprise Wheel & Car Corp., 363 U. S. 593 (1960), this Court, with a minor modification irrelevant here, affirmed a District Court's order enforcing an arbitration award requiring reinstatement of the employment relationship, saying:

"When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations." (Id. at 597; emphasis added.)

The same result was reached in General Drivers Local No. 89 v. Riss & Co., Inc., 372 U. S. 517 (1963). There, employees were discharged because they chose to respect a picket line established by another union at their employer's place of business. Their own union asserted that this activity was protected under the contract and the dispute came before a "joint area committee" which ordered their reinstatement. The Court concluded that, if the committee's determination was in fact final and binding under the contract, the District Court had authority to enforce it.

Similarly, in Selb Mfg. Co. v. International Ass'n of Machinists, District 9, 305 F. 2d 177 (8th Cir. 1962), the Court of Appeals affirmed enforcement of an arbitration award requiring an employer to return machinery and equipment it had removed from its plant and to recall all the employees who were laid off as a result of the removal—to recreate not only the employment relation, but also the facilities without which that employment relation would have been impossible. See also, e.g., Local 453, International Union of Electrical Workers v. Otis Elevator Co., 314 F. 2d 25 (2d Cir.), cert. denied, 373 U. S. 949 (1963) (reinstatement); Local Lodge 1790, International Ass'n of Machinists v. Westinghouse Electric Corp., 48 CCH Labor Cases § 18,485 (D. Mass. 1963) (contracting out).

These decisions, none of which could have been rendered by federal courts in proceedings brought before them in the first instance, bespeak the congressional policy that requires enforcement of arbitration awards directing employers and employees "to remain in [a] relation of employment." Such awards are common and, as we have shown, often arise on a claim by a union that an employer has discharged employees without just cause, has laid them off in violation of a contract, has violated restrictions on subcontracting, or has improperly removed his plant and thus severed the "relation of employment."

It should not matter that those awards were enforced against employers. If §4(a) had been applicable, it would, by its terms, have applied with equal force to all defendants, whether union or employer. See, NLRB v. C & C Plywood Corp., 385 U. S. 421, 429, fn. 15 (1967); Publishers' Ass'n of New York City v. New York Mailers Union No. 6, 317 F. 2d 624, 626-627 (2d Cir. 1963), judgment vacated in part for modiness, 376 U. S. 775 (1964); Clune v. Publishers' Ass'n of New York City, 214 F. Supp. 520, 528-529

Enforcement of the award here in issue was nothing more than an application to a correlative area of the policy favoring final determination of contract disputes by arbitration. That policy must be so applied "if the means chosen by the parties for the settlement of their differences under a collective bargaining agreement is given full play." United Steelworkers v. American Mfg. Co., 363 U. S. 564, 566 (1960).

C. A Contrary Conclusion Would Do Violence to Our National Labor Policy.

The decisions of this Court have thus effectuated the unequivocally expressed intent of Congress to foster voluntary agreements that result in the expeditious and final disposition in arbitration of all disputes arising under labor contracts. This course is precisely the one that the parties at bar agreed to follow in resolving their disputes under their agreement (No. 34, R. 115).

As this Court has noted, the labor agreement "is an effort to erect a system of industrial self-government." The arbitrator (here a permanent umpire (No. 34, R. 14)) represents the judicial arm of this governmental structure. He is afforded wide latitude in the choice of remedies, and is empowered by the parties to issue final and binding determinations which must be enforceable on an expeditious basis if they are to be effective at all.

⁽S. D. N. Y.), aff'd per curiam, 314 F. 2d 343 (2d Cir. 1963); Local 861, International Bhd. of Electrical Workers v. Stone & Webster Engineering Corp., 163 F. Supp. 894 (W. D. La. 1958); cf., International Union of Electrical Workers v. General Electric Co., 341 F. 2d 571 (2d Cir. 1965).

[•] United Steelworkers v. Warrior & Gulf Navigation Co., 363 U. S. 574, 580 (1960); see also, J. I. Case Co. v. NLRB, 321 U. S. 332, 334-335 (1944).

Nevertheless, petitioner would have this Court declare that awards of arbitrators are not enforceable in equity in the federal courts whenever they have the effect of prohibiting concerted refusals "to perform any work • • • " Acceptance of petitioner's rationale would place our entire system of labor arbitration in jeopardy and seriously undermine the final and binding nature of the arbitration process. Arbitrators regularly issue awards that require maintenance of the employment relationship or otherwise govern the basis upon which that relationship is to be maintained or ended.

In addition to the subcontracting, plant removal and discharge cases referred to above (pp. 16-18, supra), the emerging common law of the labor contract is replete with decisions to this effect. See, e.g., Southern Counties Gas Co. of California, 63-2 CCH ARB ¶ 8572 (Aaron 1963) (employer had the right to require employees to work overtime): Virginia-Carolina Chemical Corp., 64-2 CCH ARB ¶ 8428 (Marshall 1962) (employer may unilaterally change shift work to day work and increase working hours); Overmyer Mould Co., Inc., 65-1 CCH ARB ¶ 8104 (Kelliher 1964) (employees may be required to work two machines rather than one); Brink's, Inc., 63-2 CCH ARB ¶ 8704 (Shister 1963) (employer could require employees to ride in back of trucks at all times); International Smelting & Refining Co., 64-3 CCH ARB ¶ 9184 (Justin 1964) (employer entitled to assign disputed work to lower-rated classification); Danner Press of Canton, Inc., 63-2 CCH ARB ¶ 8827 (Bradley 1963) (employer entitled to assign "boys" rather than journeywomen to assist cutters); Archer-Daniels-Midlands Co., 63-2 CCH ARB ¶ 8684 (Warns 1963) (part-time storeroom work could be taken over by

supervisor); Humble Oil and Refining Co., 64-2 CCH ARB ¶8567 (Larson 1964) (employer entitled to assign toolroom work to employees represented by another union in order to increase efficiency); Lebanon Steel Foundry, 64-3 CCH ARB ¶9052 (Seitz 1964) (employer entitled to enforce rule requiring employees to remain at work station until lunch hour).

Typically, non-compliance with these awards would take the form of concerted refusals to work in accordance with their terms; that is, concerted refusals to work overtime, to work a changed shift or increased hours, to work two machines rather than one, to ride in the back of a truck on all occasions, to perform the tasks of a higher rated classification, to do the work assigned by the employer when others are being given work claimed by the grievants and to remain at work in accordance with plant rules. In the instant case, non-compliance was effected by the Union by concerted refusals to work as ordered when gang starting times were set back in accordance with the contract as construed by the arbitrator (No. 78, R. 150).

Were federal courts stripped of jurisdiction to require compliance with the arbitrator's award in this and similar. cases, employers would be limited to an inadequate damage remedy calculated to exacerbate labor relations.

^{*}Nor is the remedy to be found in State courts. As matters now stand, the removal of \$301 actions from a State court either results in dismissal by the District Court or gives rise to such delay as to render equitable remedies ineffective. See, e.g., Katz v. Architectural Engineering Guild, 263 F. Supp. 222 (S. D. N. Y. 1966); Sealtest Foods v. Conrad, 262 F. Supp. 623, 625 (N. D. N. Y. 1966), noting that removal "deprived the employer of his most effective remedy and the result is the majority of those lawsuits when removed, remain on the federal dockets and wither away without further action"; Avco Corp. v. Aero Lodge 775, International Ass'n of Machinists, 263 F. Supp. 177 (M. D. Tenn. 1966);

As the neutral members of The Special Atkinson-Sinclair Committee of the Labor Law Section of the American Bar Association have noted:

"Discharge of the strikers is often inexpedient because of a lack of qualified replacements or because of the adverse effect on relationships within the plant. The damage remedy may also be unsatisfactory because the employer's losses are often hard to calculate and because the employer may hesitate to exacerbate relations with the union by bringing a damage action." (Report of the neutral members of The Special Atkinson-Sinclair Committee of the Labor Law Section of the American Bar Association 241, 242 (1963))

Tri-Boro Bagel Co. Inc. v. Bakery Drivers, 228 F. Supp. 720 (E. D. N. Y. 1963); Crestwood Dairy, Inc. v. Kelley, 222 F. Supp. 614 (E. D. N. Y. 1963); Merchants Refrigerating Co. of California v. Warehouse Union, 213 F. Supp. 177 (N. D. Cal. 1963); compare, American Dredging Co. v. Local 25, International Union of Operating Engineers, 338 F. 2d 837 (3d Cir. 1964).

In any event, if the Norris-LaGuardia Act operated to preclude federal courts from enforcing the award, it is likely that the same result would be required in State courts under federal substantive law which must be applied uniformly. See, Teamsters Local v. Lucus Flour Co., 369 U. S. 95, 103 (1965); Charles Dowd Box Co., Inc. v. Courtney, 368 U. S. 502, 514 fn. 8 (1962). Although this issue has not been authoritatively settled, the better reasoned authorities support this view. See, e.g., Independent Oil Workers v. Socony Mobil Oil, 85 N. J. Super. 453, 459-60, 205 A. 2d 78, 81-82 (Super. Ct. N. J. 1964), holding that the Norris-LaGuardia Act is part of the national labor policy within the meaning of Lucus Flour; Aaron, "Strikes in Breach of Collective Agreements: Some Unanswered Questions," 63 Colum. L. Rev. 1027, 1035-40 (1963); Hanslowe, "Labor Relations Law," 16 Syr. L. Rev. 244, 256 (1965); compare, McCarroll v. Los Angeles County Dist. Counsel of Carpenters, 49 Cal. 2d 45, 315 P. 2d 322 (1957), cert. denied, 355 U. S. 932 (1958).

^{*} Derek C. Bok, Dexter Delony, J. Keith Mann, Bernard D. Meltzer, Paul H. Sanders.

This report echoed these earlier comments of Professor Archibald Cox:

"Damages are inadequate because the injury to the business cannot be measured accurately. Furthermore, an employer can rarely afford to exacerbate labor-management relations by suing a union made up of his employees after the end of the strike." (Cox, "Current Problems in the Law of Grievance Arbitration," 30 Rocky Mt. L. Rev. 247, 255 (1958))

Similarly, as Arbitrator George Moskowitz recently pointed out:

"Employers are reluctant to resort to damage suits against unions with which they must bargain in the foreseeable future. Most recoveries would be delayed beyond the termination of the strike, and the pending suit may serve to exacerbate the relationship long after the underlying dispute has been solved. Employers want to avoid work stoppages, not be compensated for them after they happen." (Moskowitz, "Enforcement of No-Strike Clauses by Injunction," 46 Boston U. L. Rev. 343, 353 (1966))

See also, Spelfogel, "Enforcement of No-Strike Clause by Injunction Damage Action and Discipline," 17 Labor L. J. 67, 68 (1966); Comment, "Jurisdiction of Federal Courts to Enjoin Labor Disputes," 32 Tenn. L. Rev. 264, 280-1 (1965); Comment, "Quid Pro Quo in Federal Labor Law: Enforcement of the No-Strike Clause," 1963 Wisc. L. Rev. 626, 634-35 (1963); Aaron, "Labor Injunction Reappraised," 10 U. C. L. A. L. Rev. 292, 345 (1963).

As this Court recently noted in NLRB v. C & C Plywood Corp., 385 U. S. 421, 430 (1967), "in the labor field, as in few others, time is crucially important in obtaining relief." The reason is obvious. Economic coercion applied during extended litigation often prevents the coerced party from vindicating its legal rights or, as a practical matter, renders a legal victory meaningless. Nowhere would the time-consuming nature of this remedy be more burdensome than in discharge for due cause cases in which unions seek to require employers "to remain in [a] relation of employment"; that is, to restore an employee to his job with back pay. The critical consideration here is the prompt restoration of the employment relationship so as not unduly to burden the discharged employee who may well be out of work and unpaid until the award is enforced.

In short, when the mechanistic application of §4(a) of the Norris-LaGuardia Act advocated by petitioner is viewed in full perspective, it becomes obvious that the result it would lead to is the antithesis of the expert, expeditious and inexpensive arbitral means which Congress has chosen to favor as a method for disposing of all disputes under labor agreements. As we shall demonstrate in Points II and III, neither the Norris-LaGuardia Act nor this Court's decision in the Sinclair case requires this result.

^{*} Commenting on the efficacy, of a union's §301 suit for damages, this Court hoted that

[&]quot;If damages for breach of contract were sought, the union would have difficulty in establishing the amount of injury caused by respondent's action. For the real injury in this case is to the union's status as bargaining representative, and it would be difficult to translate such damages into dollars and cents." (Id. at 429 fn. 15)

POINT II

Affirmance here would not put the courts back into the business of deciding the equities of labor disputes, from which the Norris-LaGuardia Act was designed to exclude them. The arbitral process itself accomplished that end.

The Norris-LaGuardia Act was adopted in an atmosphere of resentment against judges who, under the guise of exercising their equitable discretion, were in fact deciding the "fate of an industrial controversy." The primary purpose of the Norris-LaGuardia Act—a purpose it has achieved with remarkable effectiveness—was to relieve federal judges of the "impossible task" of deciding the merits of such controversies. Professor Felix Frankfurter put it this way:

"The whole fate of an industrial controversy may depend upon which side is the beneficiary of judicial discretion more than upon which side is acting according to law. The slant with which one reads the evidence will determine what the 'facts' are-and the unconsciousness of the slant in most cases makes its operation more decisive. Procedure thus becomes a social factor in labor litigation. In fairness to the litigants, the prepossessions of a particular judge, however disinterested, should not be allowed opportunity to determine the operation of that procedure. It will promote confidence in law in one of its most sensitive areas, to relieve a judge of the impossible task of isolating his prepossessions from his judicial temper. In controversies of this class, only the most biased judges disavow the total absence of bias."

(Frankfurter & Greene, "Congressional Power Over the Labor Injunction", 31 Colum. L. Rev. 385, 410-411 (1931))

The Act was therefore adopted to take federal judges out of the business of weighing equities in existing labor disputes and issuing injunctions based on their views of such equities.

This lawsuit was not an attempt to put the courts back into that business. Quite to the contrary, under principles now well settled by the Steelworkers trilogy, this case presents, not an unsettled labor dispute to be decided by the court, but the judgment of a tribunal which, having been established for that purpose, had already decided and disposed of such a dispute. The only question presented to the courts below was whether that tribunal was one of competent jurisdiction.

Nor did respondent apply for the exercise of judicial discretion, the traditional prerequisite for the issuance of the "injunction" proscribed by the Norris-LaGuardia Act. Again the Steelworkers trilogy makes it clear that under the federal law governing labor contracts, when enforcement of an arbitration award is sought, the courts are precluded from exercising any discretion, equitable or otherwise.**

^{*}United Steelworkers v. Enterprise Wheel & Car Corp., 363 U. S. 593, 599 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U. S. 574; 581-2 (1960); United Steelworkers v. American Mfg. Co., 363 U. S. 564, 567-8 (1960).

^{**} See also, Western Iowa Pork Co. v. Nat'l Bhd. of Packing-house Workers, Local 52, 366 F.2d 275 (8th Cir. 1966); International Bhd. of Pulp Workers, Local 874 v. St. Regis Paper Co., 362 F. 2d 711 (5th Cir. 1966); United Steelworkers v. Caster Mold

The Steelworkers trilogy demonstrates that, as a matter of federal law, when a collective bargaining agreement contains an arbitration clause, the forum for the resolution of labor disputes is not the court, but the arbitration tribunal. There, arbitrators voluntarily chosen by the parties are conclusively presumed to have exercised an informed discretion. Once such discretion is exercised by an arbitrator found by the courts to have had competent jurisdiction, nothing remains to be done but to enforce the award.

Here, the arbitrator was called upon to construe the setback provisions of an association-wide collective bargaining agreement. He decided that the contract permitted the setting back of gang starting times "without qualification" (No. 34, R. 31). Issued under a multi-employer contract, this award applied to all employers and employees covered by it and governed the relationship of the parties for the term of their agreement. Implicit in the award is the requirement that petitioner refrain from concerted activity that would prevent members of the association from applying the contract as construed by the arbitrator. ••

and Machine Co., 345 F. 2d 429 (6th Cir. 1965); Local 453, International Union of Electrical Workers v. Otis Elevator Co., 314 F. 2d 25 (2d Cir.), cert. denied, 373 U. S. 949 (1963).

^{*}Petitioner ignores the association-wide nature of the contract, insisting that the same dispute must be re-arbitrated whenever it arises. According to petitioner, each ship and employer represents a separate case even when the same substantive issue is involved (Brief, p. 16).

^{**} The fundamental purpose of the arbitration process would be frustrated were the members of PMTA required to return to the arbitrator to seek relief whenever his prior award was disregarded. Such a course would allow the Union's coercive opposition to the award to have its desired effect by enlarging the time during which such coercion could be applied. The record shows that the stoppage

In these circumstances, the District Court did not issue an "injunction", nor is the controversy "a case arising out of a labor dispute." That dispute had been laid to rest by the arbitrator and the order directing compliance with the award is not an "injunction". Entirely extraneous in such a context would be findings that unlawful acts had been threatened or will be committed, or that substantial irreparable injury will occur unless the decree sought is issued, or that a balancing of the equities favors the petitioner, or that there is no adequate remedy at law, or that the public officers charged with the duty of protecting the respondent's property are unable or unwilling to furnish adequate protection.

These are the requirements of §7 of the Norris-LaGuardia Act—the very requirements ruled inapposite by this
Court to an action for specific performance of a covenant
to arbitrate. See, Textile Workers Union of America v.
Lincoln Mills of Alabama, 353 U. S. 448, 457-59 (1957),
discussed at pp. 12-13, supra. A fortiori, such requirements
are equally irrelevant to an application to enforce an
arbitration award. As a matter of federal substantive
law, the courts are precluded from inquiring into such
questions on such an application.

Thus, one has but to read the Norris-LaGuardia Act to realize that none of its procedures or safeguards are in

that gave rise to the instant action was attributable to a setback and was successful in that the affected member of the association was thus forced to accept the Union's position, despite the award that allowed members of the association to set back "without qualification" (No. 34, R. 39). Now, petitioner argues that this surrender under duress somehow renders this case moot (Brief, pp. 16-17).

any way relevant here. When, in accordance with the rules laid down by this Court, an arbitrator has decided and disposed of the labor dispute, the Norris-LaGuardia Act no longer has any function to perform. Indeed, once a dispute is placed before the arbitrator for a final and binding determination, the Norris-LaGuardia Act has performed the very function Congress intended it to perform: resolution of labor disputes by voluntary arbitration. Section 8 of the Act explicitly encourages the parties to settle their disputes "either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration".

It was for such a reason—the fact that the plaintiff had refused an opportunity to consent to arbitration—that this Court, in Brotherhood of R.R. Trainmen v. Toledo, Peoria & Western R.R., 321 U. S. 50 (1944), invoked the bar of the Norris-LaGuardia Act to preclude a court from issuing an injunction against violence emanating from a strike in time of war. The Court is now told, however, that despite the expression of congressional intent in §8 of the Act, §4(a) must be read to deprive federal courts of jurisdiction to enforce the very arbitration awards which §8 treats as the favored method for finally disposing of labor disputes.

To state this proposition is to refute it. Its acceptance would defeat the purposes of the Norris-LaGuardia Act.

POINT III

The Court of Appeals correctly distinguished Sinclair Refining Co. v. Atkinson, a decision that in no way precludes federal courts from enforcing arbitrators' awards.

The relief requested in Sinclair Refining Co., v. Atkinson, supra, was an injunction to enforce the no-strike clause that would have first required inquiry into the merits of a long-standing series of labor disputes. The District Court was not asked to enforce the award of an arbitrator, but rather directly to implement the substantive provisions of the collective agreement. Under its labor contract, no grievance procedure was available to Sinclair and it could not obtain arbitration to vindicate its rights under the nostrike clause or any other provision of the agreement (see, Atkinson v. Sinclair Refining Co., 370 U. S. 238 (1962)). There was therefore no arbitration tribunal competent to construe the contract.

In these circumstances, the employer went to court with a complaint containing three separate counts. In the first, Sinclair sued under \$301 of the Taft-Hartley Act for damages caused by the last of a series of nine stoppages occurring over a period of 19 months. In the second, Sinclair sued 24 individual defendants alleging that, as union agents, officers and committeemen, they had breached the collective agreement and induced others to do so. Amongst other defenses, the unions asserted that these issues were referable to arbitration under the collective bargaining agreement and that the suit on the damage counts should therefore be stayed pending arbitration.

The District Court upheld the first count, and dismissed the second (Sinclair Refining Co. v. Atkinson, 187 F. Supp. 225 (1960)). Its conclusion was affirmed by this Court in Atkinson v. Sinclair Refining Co., supra. The Court's ruling on the first count was premised upon the conclusion that Sinclair did not have a right under the contract to arbitrate claims of violations by the unions (Id. at 243). As to the second count, the Court held that no action lay against the unions' officers as individuals (Id. at 249).

In the third count, which the Court treated in a separate and more often-cited opinion (Sinclair Refining Co. v. Atkinson, 370 U. S. 195 (1962)), Sinclair sought an injunction against the unions to prohibit repeated violations of the no-strike clause of the type that had taken place over the preceding 19-month period (Id. at 197-98). The unions moved to dismiss this count on the ground that §4(a) of the Norris-LaGuardia Act deprived the District Court of jurisdiction. This Court held that the federal courts were without jurisdiction to grant the relief requested; namely, an injunction to enforce the no-strike clause that would have required inquiry into the merits of a long-standing series of unresolved labor disputes.

In Sinclair, the no-strike clause was not enforceable in arbitration and at no time was the Court faced with the question whether the Norris-LaGuardia Act precluded the District Court from enforcing an arbitrator's award directing the unions to comply with a contractual no-strike pledge. That issue did not, and could not, have come before the Court. What came before the District Court in Sinclair was a raw labor dispute in which all issues remained to be determined. The courts would thus have been re-

quired, in a plenary action on the contract, to weigh the equities, to assess the nature of the damages inflicted and to determine the availability and adequacy of remedies at law. The Norris-LaGuardia Act was designed to prevent courts from engaging in just such inquiries.

The case at bar, of course, arises in a quite different context. The grievance and arbitration machinery in the agreement between petitioner and respondent not only permitted the employer to file grievances and to arbitrate a broad range of contractual issues; it also established a procedure for the expeditious resolution of such disputes.

This machinery accomplished precisely the result bargained for by the parties; namely, the final determination of sensitive issues by an expert arbitrator familiar with the modes and mores of the work place and frequently called upon to apply the collective bargaining agreement as a living document to meet the needs of the parties who must continue to live together in the volatile industrial context in which they find themselves. Unlike the Sinclair case, this action was not brought until the arbitrator had spoken and the Union had tiled to comply with his award. And, unlike Sinclair, there was at this juncture nothing left for the court save to inquire into the jurisdiction of the arbitrator and into such questions of arbitral misconduct as might have been, but were not, alleged. Once the award was issued, the District Court could not reopen the merits of the dispute and was required to enforce the determination of the arbitrator; that is, to issue such a decree as would prevent petitioner from engaging in concerted refusals to abide by the contract as construed in the award.

No policy of the United States could possibly preclude judicial enforcement of the award here in issue, and cer-

tainly no such policy emerges from Sinclair where this Court treated arbitration as "a kingpin of federal labor policy" commenting:

"Obedience to the congressional commands of the Norris-LaGuardia Act does not directly affect the 'congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes' at all for it does not impair the right of an employer to obtain an order compelling arbitration of any dispute that may have been made arbitrable by the provisions of an effective collective bargaining agreement." (Id. at 213-214; emphasis added.)

Certainly, no such policy can be found in the Norris-LaGuardia Act itself. As this Court noted in Lincoln Mills, §8 evidences a congressional policy favoring the disposition of labor disputes by arbitration, precisely the course followed in this case. Finally, no such policy can be found in the Taft-Hartley Act, for sections 201 and 203 of that Act explicitly restate the policy of the United States favoring final and binding resolution of labor disputes by arbitration.

This rationale has been tested and accepted both in court and by the overwhelming weight of scholarly authorities who have considered this problem in a context involving judicial implementation of arbitrators' awards enforcing no-strike clauses. In New York, where a "little Norris-LaGuardia Act" governs, the highest court of the State, as long ago as 1958, settled this question by upholding and enforcing an award which had directed a union to end an illegal slowdown, Matter of Ruppert (Egelhofer), 3 N. Y. 2d 576, 148 N. E. 2d 129, 170 N. Y. S. 2d 785 (1958)).

Holding that there was jurisdiction to enforce that order, the court stated:

"[O]nce we have held that this particular employer-union agreement not only did not, forbid but contemplated the inclusion of an injunction in such an award, no ground remains for invalidating this injunction. Section 876-a, like its prototype the Federal Norris-LaGuardia Act, was the result of union resentment against the issuance of injunctions in labor strikes. But arbitration is voluntary and there is no reason why unions and employers should deny such powers to the special tribunals they themselves create. Section 876-a and article 84 (Arbitration) are both in our Civil Practice Act. Each represents a separate public policy and by affirming here we harmonize those two policies." (Id. at 581-82, 148 N. E. 2d at 131, 170 N. Y. S. 2d at 788.)

See also, Matter of New York Shipping Assn., 48 CCH Labor Cases ¶ 50,973 (N. Y. Sup. Ct. N. Y. Co. 1963).

Such relief had also been granted in New Orleans Steamship Ass'n v. General Longshore Workers, Local 1418, 44 CCH Labor Cases [17,575 (E. D. La. 1962) where, rejecting the union's claim that §4(a) of the Norris-LaGuardia Act deprived it of jurisdiction, the District Court enforced an award directing the union to cease and desist from engaging in violation of the no-strike clause, saying:

r"It is true that the award of the arbitrator is based upon the 'no strike' provision in the present contract. However, the parties to the contract agreed to be bound by the decision of the arbitrator, and the plain-

tiff is entitled to have the award of the arbitrator enforced. Steelworkers v. Enterprise Corp. [363 U. S. '593 (1960)]." (Id. at p. 26,604)

Contra, Marine Transport Lines, Inc. v. Curran, 55 CCH Labo Cases | 11,748 (S. D. N. Y. 1967), which, in our view, incorrectly applied the principles of the Sinclair case; cf., Gulf & South American Steamship Co., Inc. v. National Maritime Union, 360 F. 2d 63 (5th Cir. 1966), in which the court refused to confirm an award implementing a nostrike clause because the arbitrator lacked jurisdiction to determine the controversy that gave rise to the strike. In these circumstances, the relief sought fell within the ambit of the Sinclair case. Here, however, the arbitrator had jurisdiction under the contract to determine the controversy before him.

The Ruppert and New Orleans Steamship decisions, which effectuate arbitrators' awards implementing the nostrike clause, correctly reflect Congress's intention to establish arbitration as a kingpin of the national labor policy. As Senator Taft stated: "The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract." (S. Rep. 105, 80th Cong. 1st Sess. 16 (1947); emphasis added.)

These policy considerations are valid, and indeed compelling, today and should not be affected by the Sinclair decision which did not involve enforcement of an arbitration award. This is the view adopted by the labor relations bar, including those identified with the union point of view, in a series of post-Sinclair articles commenting favorably on the Ruppert case.

The 1963-64 Report of Members Representing Labor Unions* on the Special Atkinson-Sinclair Committee of the Labor Law Section of the American Bar Association, although opposing a resolution advocating reversal of the Sinclair decision, nevertheless accepted in substance the rationale of the Ruppert case, saying:

"What we have said here is not intended to suggest that we are unsympathetic to the position of the employer whose employees strike in violation of a clear contractual commitment not to do so. We just don't believe that the problem should be subject to the type of treatment suggested by the Resolution. There may be alternatives other than those already available to the employer. For example, in the State of New York it is possible for the employer to obtain an arbitration award directing the immediate termination of a strike in violation of contract and, thereafter, with relative dispatch, have such award enforced by appropriate court order despite New York's little Norris-LaGuardia Act.

"While all members signing this report do not necessarily subscribe to this method of handling the probdem, all recognize that this approach would permit the arbitrator to fulfill his assigned function, and make the initial, basic determination, as the parties have agreed and intended that he do, and would require the union thereafter to discharge its own obligation under the

^{*} Louis S. Belkin, Elliot Bredhoff, Charles K. Hackler, Mozart G. Ratner, Emil Schlesinger, David Previant.

contract. That is what it agreed to do—to comply with the adjudication of the arbitrator as to the meaning and scope of the contract." (Id. at 238-239; emphasis added.)

The same result was reached in 1965 by the Committee on Labor and Social Security Legislation of the Association of the Bar of the City of New York which in pertinent part commented:

"1. In Ruppert v. Egelhofer, 3 N. Y. 2d 576, 148 N. E. 2d 129 (1958) the New York Court of Appeals upheld judicial enforcement of an award barring a strike despite the state anti-injunction act. We believe a similar result to be desirable under federal law as well and consistent with the reasons underlying the Norris-LaGuardia Act. The evil at which that Act was aimed flowed in large part from injunctions granted during the period prior to the Act by courts felt to be hostile to the interests of trade unionism. These objections to injunctive power do not apply to the enforcement of the award of [a] tribunal voluntarily agreed upon by the parties themselves It is noteworthy that availability of relief of the Ruppert type enjoys support from union as well as management representatives and third parties, notwithstanding the fact that the relief would be directed against labor's strike weapon. See 1963 Proceedings, A. B. A. Section of Labor Relations Law; p. 238-9. There is obviously a special value to a legal rule which enjoys wide acceptance in a highly controversial area" (4 Reports of Committees of the Ass'n of the Bar Concerned with Federal Legislation, 16, 21 (1965)).

See also, Givens, "Injunctive Enforcement of Arbitration Awards Prohibiting Strikes," 17 Lab. L. J. 292, 294-296 (1966) where the author commented that

"The touchstone of the Ruppert decision, that arbitration is voluntary, appears to have equal force under the Norris-LaGuardia Act, and suggests that the Ruppert principle may properly be incorporated into the developing federal law under Section 301. This question is not foreclosed by the holdings to date that direct judicial relief not premised upon an award is unavailable under the Norris-LaGuardia Act • •

"Further, a holding that injunctive relief is available in the federal courts in the Ruppert situation would relieve the dilemma in which rulings that state courts may still enjoin strikes in breach of contract create a difference in result according to the tribunal in which suit is brought. A contrary ruling might make Section 301 have the indirect effect of narrowing rather than widening the scope of relief for breaches of collective bargaining agreements, a result certainly not intended when the provision was enacted. The ancillary dilemma over whether suits for injunctive relief brought in state courts are removable to the federal courts would also be obviated to some extent.

"And by strengthening the quid pro quo received by employers in exchange for the agreement to arbitrate, absorption of the Ruppert principle would encourage the already wide acceptance of voluntary arbitration. The use of arbitration processes to deal with alleged breaches of no-strike provisions, a procedure already upheld by the Supreme Court under Section 301 where the dispute is arbitrable under the contract would also

receive further impetus. The institution of arbitration would thereby be further strengthened. The Ruppert approach, further, allows the parties to tailor
their own procedure. Provisions may be included in
an agreement for accelerated arbitration under specified circumstances, including such devices as use of a
stand-by arbitrator if a continuing impartial chairman
is not utilized. The circumstances in which injunctive
relief would be authorized could also be specified if
desired by the parties.

"The incorporation of the Ruppert principle as federal law would thus appear consistent with Section 301, with the purposes of the Norris-LaGuardia Act, and with the demands of industrial relations and the evolving national law of collective agreements."

Similar comment is found in Yankwitt, "Injunctive Relief Against a Union's Violation of a No-Strike Clause", 52 Cornell L. Q. 132, 147-148 (1966), where, after discussing Ruppert, the commentator says:

"Regardless of whether one thinks that Sinclair is part of the federal law the states are obliged to apply under 301, there is a distinction between the order of the arbitrator, chosen by the parties and vested with authority by them, and the judicially issued injunction. Where the collective bargaining agreement has given the arbitrator the power to determine the remedy for a violation of contract, under the rationale of [United Steelworkers v.] Enterprise Wheel [& Car Corp., 363 U. S. 593 (1960)] the court may find a basis upon which to rest the arbitrator's power to enjoin the violation of a no-strike clause. This reasoning would appear to apply to federal and state courts alike.

nize these considerations and vest authority in an arbitrator to adjudicate controversies arising between them, then the arbitrator's use of the full scope of power allotted to him should be judicially approved and enforced. Indulgence should be given to the arbitrator's discretion. 'When the judiciary undertakes to determine the merits of a grievance under the guise of interpreting the grievance procedure of collective bargaining agreements, it usurps a function which under that regime is entrusted to the arbitration tribunal.'

"If the arbitrator, then, is deemed capable of wielding the power to enjoin a strike in breach of the agreement, the remaining question concerns when should he be deemed to have that authority? The Supreme Court affords the answer in Enterprise Wheel. The widest latitude is to be allowed the arbitrator in interpreting the provisions of the collective bargaining agreement, for 'it is [his] . . . construction which was bargained for.' If uniformity is then diminished somewhat, the resulting diversity will be based upon the parties' own choosing within the favored framework of arbitration."

Finally, Professor Summers of the Yale Law School, in a post-Sinclair article, poses the problem of what would happen if a union refused to obey a court order to arbitrate a grievance and strikes in order to compel the employer to accept its terms for settlement. He concludes that the courts still have power to end such a stoppage by use of its contempt power:

"In these cases the court is not simply enforcing an arbitrator's award, but is itself prohibiting the strike. The court order thus takes on many of the attributes of a labor injunction. On the other hand courts traditionally have broad powers to protect their own processes and to punish conduct which negates their orders. The union's conduct is calculated to frustrate the court's order that the dispute shall be decided by the arbitrator and that his decision shall be obeyed. The court is not enforcing the no-strike clause at the behest of the employer, it is enforcing its own order on its own behalf. Sinclair does not decide these cases, for in that case there was but a bare demand by the employer for an injunction to protect his private rights. The court had issued no orders to protect. If this seems a distinction without a difference, perhaps it is enough to say that when Norris-LaGuardia has threatened to frustrate responsible bargaining processes, distinctions have been made of lesser stuff.

"If the court should hold, as Mr. Justice Black's uncompromising language might suggest, that all federal court orders restraining strikes are barred, then the policy of promoting arbitration can not be fulfilled in the federal courts. Unions can follow the form of arbitration but deny its substance by resorting to the forum of economic force, and the only restraint will be the often inadequate remedy of money damages." (Summers, "Labor Law Decisions of the Supreme Court 1961 Term", 1962 Labor Law Section of the American Bar Ass'n 51, 64-65.).

Furthermore, Professor Summers explains that if this Court decides to limit the Sinclair case to its facts, the contempt process could be utilized to prevent strikes in breach of contract. "Because arbitration would be the precondition for effective protection against strikes, the employer would be encouraged to seek more comprehensive arbitration provisions. Thus, the net effect of Sinclair, narrowly applied, might be to lead the parties to increased reliance on the arbitral process as the substitute for economic force. The end result would be to promote the policy pronounced by the Court in Steelworkers." (Id. at 65.) See also, Aaron, "Strikes in Breach of Collective Agreements: Some Unanswered Questions", 63 Colum. L. Rev. 1027, 1038 (1963).

The same policy considerations require implementation of the award at bar and sanction contempt proceedings to effectuate the order of the District Court requiring compliance with the arbitrator's ruling. It should not matter that in this case the award did not explicitly order the Union to refrain from concerted refusals to abide by the contract as construed by the arbitrator. No other way to vindicate the court's process has been suggested and, unless it is to be treated entirely as a nullity, no choice remains but to enforce it in contempt proceedings.

Any other conclusion would entail an assumption that it was the duty of the arbitrator to assume that his final, binding, and fully determinative award might not be so regarded and that he must therefore include in his award an affirmative direction anticipating such extra-legal conduct. No valid reason appears for treating as fatally defective an award which does not restate in rote fashion the law's demand that it be complied with. Parties should

not be forced to return to an arbitrator to secure still another award repeating the obvious: that union-sponsored concerted refusals to work in conformity with the arbitrator's earlier lawful decision must stop. The delay inherent in such an empty requirement is often all the economic pressure the union needs to impose on an employer a view that has already been authoritatively determined to be inconsistent with the governing collective agreement.

There is thus no substance to any attempted distinction between an award that explicitly proscribes concerted activity and one that simply construes the agreement and thereby implicitly precludes concerted activity in derogation of the agreement as so construed. Both types of awards should be enforced and compliance should be effectuated, if necessary, by contempt proceedings. In any event, even if there were validity to such a distinction, there would certainly be no basis for a result in these cases that would extend the Norris-LaGuardia Act to situations in which the arbitrator expressly protects his award by precluding concerted refusals to work in accordance with its terms, or expressly orders the union to cease and desist from violating a no-strike clause. The enforceability of an express arbitral mandate, the kind that occurs most frequently in no-strike clause cases, should at the very least be reserved for determination in a case involving such an award.

We repeat, however, that there would be no substance to any attempt at such a distinction. The records in these cases present a full opportunity to this Court to adopt the rationale of the Ruppert decision of the New York Court of Appeals and to reconcile the Norris-LaGuardia and Taft-Hartley Acts as so many learned writers agree that

they were meant by Congress to be reconciled. Adoption of that rationale implies no retreat from the decision in Sinclair which may be left standing to govern cases not involving compliance with arbitration awards.

CONCLUSION

The authorities lend compelling support to the proposition that the Norris-LaGuardia Act was not designed to preclude enforcement of arbitrators' awards which either explicitly or by implication preclude employees from concertedly "ceasing or refusing to perform any work " " " They demonstrate that implementation of such awards is consonant with the policy of the Norris-LaGuardia Act and in accord with our national labor policy which embraces effective voluntary arbitration as the favored means for the settlement of all disputes arising under collective agreements.

The court below correctly concluded that there was no conflict in this respect between the Norris-LaGuardia Act and our national labor policy—a policy which dictates that both the covenant to arbitrate and the award of an arbitrator must be enforced whenever no misconduct or lack of arbitral jurisdiction is shown. Once this basic principle is recognized, as it was below, no further difficulty prevents this Court from holding petitioner to its bargain by enforcing the award and by permitting the district courts to

vindicate their process by appropriate measures when the judicial order of enforcement is ignored.

. The judgments should be affirmed.

Respectfully submitted,

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September 22, 1967

SUPREME COURT OF THE UNITED STATES

Nos. 34 AND 78.—OCTOBER TERM, 1967.

International Longshoremen's Assn., Local 1291, Petitioner,

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v.

Philadelphia Marine Trade Association.

International Longshoremen's Assn., Local 1291, Officers & Members, Petitioners,

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υ.

Philadelphia Marine Trade Association. On Writs of Certiorari to the United States Court of Appeals for the Third Circuit.

[November 6, 1967.]

Mr. Justice Stewart delivered the opinion of the Court.

These cases arise from a series of strikes along the Philadelphia waterfront. The petitioner, a union representing the longshoremen involved in those strikes, had entered into a collective bargaining agreement in 1959 with the respondent, an association of employers in the Port of Philadelphia. The agreement included provisions for compensating longshoremen who are told after they report for duty that they will not be needed until the afternoon.¹ The union construed those "set-back" provi-

The 1959 agreement provided in Article 9 (a) that "Men employed from Monday to Sunday, inclusive, shall be guaranteed four (4) hours' pay for the period between 8:00 A. M. and 12:00 Noon, regardless of any condition." Article 9 (h) provided that "If a ship is knocked off on account of inclement weather by the Ship's Master or his authorized representative, the men will be paid the

sions to mean that, at least in some situations, longshoremen whose employment was postponed because of unfavorable weather conditions were entitled to four hours' pay; the association interpreted the provisions to guarantee no more than one hour's pay under such circumstances.

In April 1965, when this disagreement first became apparent, the parties followed the grievance procedure established by their collective bargaining contract and submitted the matter to an arbitrator for binding settlement.² On June 11 the arbitrator ruled that the

applicable guarantee, but in the event the men knock off themselves, they will be paid only for the time worked, regardless of guarantee previded for in this Agreement."

A Memorandum of Settlement, effective October 1, 1964, provided in Article 10 (5) that "[f]or work commencing at 8 AM on Monday or at 8 AM on the day following a holiday," employers would "have the right because of non-arrival of a vessel in port to cancel the gangs by 7:30 A. M." Article 10 (6) then stated: "Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM at which time a four hour guarantee shall apply for the morning period unless employed during the morning period."

Article 16 of the Memorandum of Settlement adopted the provisions of the 1959 agreement by reference, with the proviso that, in cases of conflict, "the provisions of [the Memorandum] shall prevail."

² Article 28 of the 1959 agreement, unchanged by the Memorandum of Settlement, provided:

"All disputes and grievances of any kind or nature whatsoever arising under the terms; and conditions of this agreement, and all questions involving the interpretation of this agreement other than any disputes or grievances arising under the terms and conditions of paragraph 13 (d) hereof, shall be referred to a Grievance Committee, which shall consist of two members selected by the Employers and two members selected by the Union. . . Should the Grievance Committee be unable to resolve the issue submitted and should neither party request an immediate decision from the Arbitrator,

association's reading of the set-back provisions was correct.³ In July, however, a group of union members refused to unload a ship unless their employer would promise four hours' pay for having set back their starting

then the grievance or dispute shall be submitted to a Joint Grievance Panel consisting of three representatives of the Association and three representatives of the Union. To the end that there shall be no work interruptions and to the end that there shall be limited necessity for arbitration, the Panel shall make every effort to resolve all grievances or disputes which could not be resolved by the Grievance Committee. . . . Should the Panel be unable to resolve a grievance or dispute which arose in the previous two weeks, or be unable to resolve a grievance or dispute anticipated in the ensuing two weeks, the dispute or grievance, including matters of interpretation of the contract, shall be referred to an Impartial Arbitrator who shall be selected to serve for a period of one year from a panel of five arbitrators to be submitted by the American Arbitration Association. . . . The Arbitrator thus selected shall conduct his hearings and procedures in accordance with the Rules of the American Arbitration Association, except that he shall be obliged to render his decision within forty-eight hours of the conclusion of his hearings or procedures. . . . Should the terms and conditions of this agreement fail to specifically provide for an issue in dispute, or should a provision of this agreement be the subject of disputed interpretation, the Arbitrator shall consider port practice in resolving the issue before him. If the Arbitrator determines that there is no port practice to assist him in determining an issue not specifically provided for in the collective bargaining agreement, or no port practice to assist him in resolving an interpretation of the agreement, the issue shall become the subject of negotiation between the parties. There shall be no strike and no lock-out during the pendency of any dispute or issue while before the Grievance Committee, the Joint Panel, or the Arbitrator."

3 The text of the arbitrator's award was this:

"The contention of the Employer, the Philadelphia Marine Trade Association, is hereby sustained and it is the Arbitrator's determination that Section 10 (6) of the Memorandum of Settlement dated February 11, 1965, providing gangs 'ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM, at which time a 4 hour guarantee shall

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time from 8 a. m. to 1 p. m. The union sought to arbitrate the matter, but the association viewed the original arbitrator's decision as controlling and instituted proceedings in the District Court to enforce it. The complaint alleged that the union had refused "to abide by the terms of the Arbitrator's Award . . resulting in serious loss and damage to [the] Employer . . . and to the Port of Philadelphia." This refusal, the complaint charged, constituted "a breach of the applicable provisions of the current Collective Bargaining Agreement between the P. M. T. A. and the Union." The complaint concluded with a prayer "that the Court set an immediate hearing and enter an order enforcing the Arbitrator's Award, and that plaintiff may have such other and further relief as may be justified."

Before the court could take any action, the employer had met the union's demands and the men had returned to work. The District Court heard evidence in order to "put the facts on record" but concluded that the case was "moot at the moment" and decided simply to "keep the matter in hand as a judge [and] take jurisdiction . . . [i]f. anything arises." A similar situation did in fact arise—this time in September. Again, before the District Court could act, the work stoppage ended. The association nonetheless requested

"an order . . . to make it perfectly clear to the [union] that it is required to comply with the Arbi-

apply. A 1 hour guarantee shall apply for the morning period unless employed during the morning period, may be invoked by the Employer without qualification.

^{*&}quot;The contention of the Union, the International Longshoremen's Association, Local No. 1291, that Section 10 (6) of the Memorandum of Settlement dated February 11, 1965, referred to above, can only be invoked by the Employer because of non-arrival of a vessel in port, is denied."

trator's award because we cannot operate in this port if we are going to be continually harassed by the Union in taking the position that they are not going to abide by an Arbitrator's award"

Counsel for the union rejected that characterization of its position. He submitted that the set-back disputes of July and September were distinguishable from the one which occurred in April, and that the arbitrator's decision of June 11, 1965, resolving the April controversy, was not controlling. The District Court expressed no opinion on any of these contentions but simply entered a decree, dated September 15, 1965, requiring that the arbitrator's award "issued on June 11, 1965, be specifically enforced." The decree ordered the union "to comply

⁴ The union's position in this regard was twofold. It maintained, first, that even if the July and September disputes had been factually identical to that of April, it was "quite clear . . . from past practice and from the agreement itself that . . . the award as to [any given] dispute relates only to that dispute and is not controlling so far as any future dispute is concerned." The union contended, second, that the disputes were factually different in at least one crucial respect: In the later disputes, the longshoremen were not notified of the set back by 7:30 a. m., as required by Article 10 of the Memorandum of Settlement. The arbitrator's award, by its own terms, dealt only with situations in which longshoremen were "set back at 7:30 a. m." Counsel for the association seemingly agreed that the question of notice thus presented an independently arbitrable issue. He said: "[T]he factual issues as far as whether or not there was notice . . . should be brought up under the grievance procedure which is in the contract." "The question of notification," he agreed, "was not a matter in the arbitrator's award." He stated that the time and method of notification had not changed from April to September but he conceded that the problem "was never brought to [the arbitrator's] attention by the parties." On this basis, counsel for the union said that his adversary had "admitted on the stand that this situation goes beyond the arbitrator's award." The District Judge thought otherwise: "You have added words to his mouth, my dear boy, and that you can't do."

with and to abide by the said Award." It contained no other command.

When the District Court first indicated that it would issue such a decree, counsel for the union asked the court for clarification:

"Mr. Freedman: Well, what does it mean, Your Honor?

"The Court: That you will have to determine, what it means.

"Mr. Freedman: Well, I am asking. I have to give my client advice and I don't know what it means. I am asking Your Honor to tell me what it means. It doesn't—

"The Court: You handled the case. You know about it

"Mr. Freedman: I am telling you very frankly now I don't know what this order means, this proposed order. It says, 'Enforcement of the award.' Now, just what does it mean? . . . The arbitration . . . involved an interpretation of the contract under a specific set of facts . . . Now, how do you enforce it? That case is over and done with. These are new cases. Your Honor is changing the contract of the parties when you foreclose them from going to arbitration on this point again. . . .

⁵ The full text of the decree was this:

[&]quot;ORDER-September 15, 1965

[&]quot;And Now to Wit, This 15th day of September, 1965, after hearing, it is hereby ordered, adjudged and decreed that the Arbitrator's Award in the matter of arbitration between the Philadelphia Marine Trade Association and International Longshoremen's Association Local 1291, issued on June 11, 1965, be specifically enforced by defendant, International Longshoremen's Association Local 1291, and the said defendant is hereby ordered to comply with and to abide, by the said Award.

[&]quot;By the Court.

"The Court: The Court has acted. This is the order.

"Mr. Freedman: Well, won't Your Honor tell me what it means?

"The Court: You read the English language and I do."

Although the association had expressly told the District Court that it was "not seeking to enjoin work stoppages," counsel for the union asked whether the decree might nonetheless have that effect:

"Mr. Freedman: . . . Does this mean that the union cannot engage in a strike or refuse to work or picket?

"The Court: You know what the arbitration was about. You know the result of the arbitration.

"I have signed the order. Anything else to come before us?

"Mr. Freedman: I know, but Your Honor is leaving me in the sky. I don't know what to say to my client.

"Mr. Scanian: No, I have nothing further, Your Honor.

"The Court: The hearing is closed."

Thus, despite counsel's repeated requests, the District Judge steadfastly refused to explain the meaning of the order.

When further set-back disputes disrupted work throughout the Port of Philadelphia in late February 1966, the District Court issued a rule to show cause why the union and its officers should not be held in contempt for violating the order of September 15. Throughout the contempt hearing held on March 1, 1966, counsel for the union sought without success to determine precisely what acts by the union, its officers, or its members were alleged to have violated the court's order. "We have

a right to know," he said, "what it is that we are being accused of" The District Judge refused to comment. At some points in the proceedings, it appeared that the alleged violation consisted of the work stoppage during the last few days of February; but at other times the inquiry focused upon the union's request for a grievance meeting on February 28 to discuss the latest set-back "Why," counsel for the association asked, did the union seek "to rearbitrate the award . . . ?" As the contempt hearing drew to a close, counsel for the association suggested yet another possibility—that union officials violated the District Court's decree when they "castigated" the arbitrator's award and failed to "tell [the men] that their work stoppage was unauthorized" under the award entered some eight months earlier. "[I]n failing to do that," counsel said, "they have shown that they do not intend to abide by the arbitrator's award which was the essence of the order which Your Honor issued"

Invited to make a closing argument, counsel for the union said:

"I really don't know what to address myself to because I don't know what it is we are being charged with. Are we being charged because we want to arbitrate or because we asked to invoke the provisions or are we being charged for something else?...

"I may say to Your Honor that we have been shooting in the dark here now, trying to guess at what may be an issue"

At the hearing following the July work stoppage, the District Judge had agreed that, as to factual situations going "beyond the arbitrator's award, the union is not bound." The union thus attempted to prove at the contempt hearing on March 1 that the February disputes, like those of the previous July and September, went beyond the arbitrator's award in that they raised a separate question of notice. Cf. n. 4, supra. The District Judge did not comment upon this aspect of the case in holding the union guilty of contempt.

But the District Judge evidently felt no need for explanation. After a short recess, the court announced that the dock strike was "illegal... under the circumstances," and that the union had "violated the order of this Court and therefore shall be adjudged in civil contempt." After extending the contempt holding to "the officers and the men who participated," the court fined the union \$100,000 per day, retroactive to 2 p. m., March 1, 1966, when the contempt hearing began, and every day thereafter "as long as the order of this Court is violated." The Court of Appeals affirmed both the original decree of the District Court and its subsequent contempt order," and we granted certiorari to consider the questions presented by these two judgments.

Much of the argument in the Court of Appeals and in this Court has centered upon the District Court's power to issue the order of September 15, 1965.9 The union maintains that the order was an injunction against work stoppages and points out that in Sinclair Refining Co. v. Atkinson, 370 U.S. 195, we held that, because of the Norris-LaGuardia Act, a federal court cannot enjoin. a work stoppage even when the applicable collective bargaining agreement contains a no-strike clause. ciation, on the other hand, argues that the order no more than enforced an arbitrator's award, and points out that in Textile Workers Union v. Lincoln Mills, 353 U.S. 448, we held that, under § 301 of the Labor Management Relations Act, a federal court may grant equitable relief to enforce an agreement to arbitrate. The parties have strenuously argued the applicability of Sinclair and Lincoln Mills to the facts before us. We do not, however,

^{7 365} F. 2d 295, 368 F. 2d 932.

^{8 386} U. S. 907, 387 U. S. 916. .

Other issues have been argued as well. In light of our disposition of this case, we do not reach them.

reach the underlying questions of federal labor law these arguments present. For whatever power the District Court might have possessed under the circumstances disclosed by this record, the conclusion is inescapable that the decree which the court in fact entered was too vague to be sustained as a valid exercise of federal judicial authority.

On its face, the decree appears merely to enforce an arbitrator's award. But that award contains only an abstract conclusion of law, not an operative command capable of "enforcement." When counsel for the union noted this difficulty and sought to ascertain the District Court's meaning, he received no response. Even at the contempt hearing on March 1, the union was not told how it had failed to "comply with and . . . abide by the [Arbitrator's] Award," in accordance with the District Court's original order. That court did express the view on March 1 that the February walkouts had been "illegal . . . under the circumstances." But such strikes would have been "illegal"-in the sense that they would have been violative of the collective bargaining agreement—even if the District Court had entered no order at all, Teamsters Local v. Lucas Flour Co., 369 U. S. 95, and the record does not reveal what further "circumstances" the court deemed relevant to the conclusion that the union had violated its decree. Thus the September 15 decree, even when illuminated by subsequent events, left entirely unclear what it demanded.

Rule 65 (d) of the Federal Rules of Civil Procedure was designed to prevent precisely the sort of confusion with which this District Court clouded its command. That rule provides:

"Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained: and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."

Whether or not the District Court's order was an "injunction" within the meaning of the Norris-LaGuardia Act, it was an equitable decree compelling obedience under the threat of contempt and was therefore an "order granting an injunction" within the meaning of Rule 65 (d). Viewing the decree as "specifically enforcing" the arbitrator's award would not alter this conclusion. We have previously employed the term "mandatory injunction" to describe an order compelling parties to abide by an agreement to arbitrate.10 and there is no reason to suppose that Rule 65 (d) employed the injunction concept more narrowly. That rule is the successor of § 19 of the Clayton Act.11 Section 19 was intended to be "of general application," to the end that "[d]efendants . . . never be left to guess at what they are forbidden to do " 12 Consistent with the spirit and purpose of its statutory predecessor, we have applied Rule 65 (d) in reviewing a judgment enforcing an order of the National Labor Relations Board,13 and the courts of appeals have applied the rule not only to prohibitory

¹⁰ Textile Workers Union v. Lincoln Mills, 353 U. S. 448, upheld federal judicial power to issue such an enforcement order. In Sinclair. Refining Co. v. Atkinson, 370 U.S. 195, we described "the equitable relief granted in" Lincoln Mills as "a mandatory injunction to carry. out an agreement to arbitrate." Id., at 212.

^{11 38} Stat. 738 (1914), 28 U. S. C. § 383 (1940).

¹² H. R. Rep. No. 627, 63d Cong., 2d Sess., 26 (1914); S. Rep. No. 698, 63d Cong., 2d Sess., 21 (1914).

¹³ Regal Knitwear Co. v. Board, 324 U. S. 9, 13-15.

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injunctions but to enforcement orders and affirmative decrees as well.¹⁴ We have no doubt, therefore, that the District Court's decree, however it might be characterized for other purposes, was an "order granting an injunction" for purposes of Rule 65 (d).

The order in this case clearly failed to comply with that rule, for it did not state in "specific... terms" that ets that it required or prohibited. The Court of Appeals viewed this error as "minor and in no way decisional." ¹⁵ We consider it both serious and decisive.

The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid. Because the decree of this District Court was not so framed, it cannot stand. And with it must fall the District Court's decision holding the union in contempt. We do not deal here with a violation of a court order by one who fully understands its meaning but chooses to ignore its mandate. We deal instead with acts alleged to violate a decree that can only be described as unintelligible. The most fundamental postulates of our legal order forbid the imposition of a penalty for disobeying a command that defies comprehension.

Reversed.

¹⁴ See, e. g., International Brotherhood v. Keystone F. Lines, 123 F. 2d 326, 330 (C.A. 10th Cir.); NLRB v. Birdsall-Stockdale Motor Co., 208 F. 2d 234, 236-237 (C. A. 10th Cir.); English v. Cunningham, 269 F. 2d 517, 524-525 (C. A. D. C. Cir.). Cf. Brumby Metals, Inc. v. Bargen, 275 F. 2d 46, 48-50 (C. A. 7th Cir.); Miami Beach Federal Savings & Loan Assn. v. Callander, 256 F. 2d 410, 415 (C. A. 5th Cir.).

^{15 365} F. 2d 295, 301.

SUPREME COURT OF THE UNITED STATES.

Nos. 34 AND 78.—OCTOBER TERM, 1967.

International Longshoremen's
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34

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v.

Philadelphia Marine Trade Association. On Writs of Certiorari to the United States Court of Appeals for the Third Circuit.

[November 6, 1967.]

MR. JUSTICE BRENNAN, concurring in result.

A concur in the result. But, like my Brother Douglas, I emphasize that today's disposition in no way implies that Sinclair Refining Co. v. Atkinson, 370 U. S. 195, determines the applicability of the Norris-LaGuardia Act to an equitable decree carefully fashioned to enforce the award of an arbitrator authorized by the parties to make final and binding interpretations of the collective bargaining agreement.

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[November 6, 1967.]

Mr. Justice Douglas, concurring in part and dissenting in part.

I would reverse in No. 78 and in No. 34 remand the case to the District Court for further proceedings.

If the order of the District Court is an "injunction" within the meaning of Rule 65 (d), then I fail to see why it is not an "injunction" within the meaning of the Norris-LaGuardia Act. Legal minds possess an inventive genius as great as those who work in the physical sciences. Perhaps a form of words could be worked out which would employ the science of semantics to distinguish the Norris-LaGuardia Act problem from the present one. I for one see no distinction; and since I feel strongly that Sinclair Refining Co. v. Atkinson, 370 U. S. 195, caused a severe dislocation in the federal scheme of arbitration of labor disputes, I think we should not set our feet on a path that may well lead to the

eventual reaffirmation of the principles of that case. My Brother STEWART expressly reserves the question whether the present order is an injunction prohibited by the Norris-LaGuardia Act. Despite this qualification, once we have held that the order constitutes an "injunction," the District Court on remand would likely consider Sinclair, which is not overruled, controlling and apply it

to preclude the issuance of another order.

We held in Textile Workers v. Lincoln Mills, 353 U.S. 448, that a failure to arbitrate was not part and parcel of the abuses against which the Norris-LaGuardia Act was aimed. We noted that Congress, in fashioning § 301 of the Labor Management Relations Act, was seeking to encourage collective bargaining agreements in which the parties agree to refrain from unilateral disruptive action, such as a strike, with respect to disputes arbitrable by the agreement. Hence, if unions could break such agreements with impunity, the congressional purpose might well be frustrated. Although § 301 does not in terms address itself to the question of remedies, it commands the District Court to hold the parties to their. contractual scheme for arbitration—the "favored process for settlement," as my Brother BRENNAN said in dissent in Sinclair, 370 U.S., at 216. I agree with his opinion that there must be an accommodation between the Norris-LaGuardia Act and all the other legislation on the books dealing with labor relations. We have had such an accommodation in the case of railroad disputes. See Brotherhood of Railroad Trainmen v. Chicago River R. Co., 353 U. S. 30. With respect to § 301, "Accommodation requires only that the anti-injunction policy of Norris-LaGuardia not intrude into areas, not vital to its ends, where injunctive relief is vital to a purpose of § 301; it does not require unconditional surrender." 370 U. S., at 225.

It would be possible, of course, to distinguish Sinclair from the instant case. In this case, the relief sought was a mandate against repetition of strikes over causes covered by the arbitrator's award. The complaint below alleged that the union's "refusal to comply with the terms of the Arbitrator's Award constitutes a breach of the applicable provisions of the current Collective Bargaining Agreement. . . . " Respondent asked that the court "enter an order enforcing the Arbitrator's Award, and that plaintiff may have such other and further relief as may be justified." We do not review here, as in Sinclair. a refusal to enter an order prohibiting unilateral disruptive action on the part of a union before that union has submitted its grievances to the arbitration procedure provided by the collective bargaining agreement. Rather, the union in fact submitted to the arbitration procedure established by the collective bargaining agreement but, if the allegations are believed, totally frustrated the process by refusing to abide by the arbiter's decision. Such a "heads I win, tails you lose," attitude plays fast and loose with the desire of Congress to encourage the peaceful and orderly settlement of labor disputes.

The union, of course, may have acted in good faith, for the new dispute may have been factually different from the one which precipitated the award. Whether or not it was, we do not know. To make the accommodation which the Textile Workers case visualizes as necessary between the policy of encouraging arbitration on the one hand and the Norris-LaGuardia restrictions on the other, the basic case must go back for further and more precise findings and the contempt case must obviously be reversed. See Sinclair, 370 U.S., at 228-229 (dissenting opinion).